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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 33

MICHAEL WILSON, GALE SONDERGARD, HOWARD DA SILVA, ET AL., PETITIONERS,

vs.

LOEW'S INCORPORATED, PARAMOUNT PICTURES, INCORPORATED, ET AL.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

PETITION FOR CERTIORARI FILED NOVEMBER 5, 1956.
CERTIORARI GRANTED JANUARY 21, 1957.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 610835

MICHAEL WILSON, GALE SONDERGARD, HOWARD DA SILVA, JOHN HOWLAND CHAMBERLIN, FRED GRAF, ALVIN HAMMER, DONALD A. GORDON, ROBERT LEES, ROBERT L. RICHARDS, WALDO SALT, PHILIP STEVENSON, LOUISE ROUSSEAU, ALFRED LEWIS LEVITT, PAUL JARRICO, ABRAHAM LINCOLN POLONSKY, WILMA SHORE, HERTA UERKVITZ, PAUL PERLIN, GUY ENDORE, EDWARD F. HUEBSCH, FREDERIC I. RINALDO, LOUIS SOLOMON and ANNE REVERE, Plaintiffs,

v.

LOEW'S INCORPORATED, a corporation; PARAMOUNT PICTURES, INC., a corporation; COLUMBIA PICTURES CORPORATION, a corporation; R.K.O. RADIO PICTURES, INC., a corporation; WARNER BROTHERS PICTURES, INC., a corporation; REPUBLIC PRODUCTIONS, INC., a corporation; SAMUEL GOLDWYN STUDIOS, INC., a corporation; HAL E. ROACH STUDIO, INC., a corporation; TWENTIETH CENTURY-FOX FILM CORPORATION, a corporation; UNIVERSAL PICTURES COMPANY, INC., a corporation; WARNER BROS. PICTURES DISTRIBUTION CORP., a corporation; WALD-KRASNA PRODUCTIONS, INC., a corporation; UNITED STATES PICTURES, INC., a corporation; STANLEY KRAMER COMPANY, a corporation; STANLEY KRAMER PRODUCTIONS, INC., a corporation; SOL LESSER PRODUCTIONS, INC., a corporation; CITADEL PICTURES, a corporation; MOTION PICTURE ASSOCIATION OF AMERICA, INC., a corporation; SOCIETY OF INDEPENDENT [fol. 2] MOTION PICTURE PRODUCERS, a corporation; 1 DOE CO., a corporation; 2 DOE CO., a corporation; 3 DOE CO., a corporation; 4 DOE CO., a corporation; 5 DOE CO., a corporation; 6 DOE CO., a corporation; 7 DOE CO., a corporation; 8 DOE CO., a corporation; 9 DOE CO., a corporation; 10 DOE CO., a corporation; 11 DOE CO., a corporation; 12 DOE CO., a corporation; 13 DOE CO., a corporation; 14 DOE CO., a corporation; 15 DOE CO., a corporation; 16

DOE Co., a co-partnership, 17 DOE and 18 DOE, co-partners; 19 DOE Co., a co-partnership; 20 DOE and 21 DOE, co-partners; 22 DOE Co., a co-partnership; 23 DOE and 24 DOE co-partners; 25 DOE Co., a co-partnership; 26 DOE and 27 DOE, co-partners; 28 DOE Co., a co-partnership; 29 DOE and 30 DOE, co-partners, L. B. MAYER, HOWARD HUGHES, E. B. MANNIX, Y. FRANK FREEMAN, HENRY GINSBERG, HARRY COHN, BEN B. KAHANE, DORE SCHARY, HARRY M. WARNER, JACK WARNER, HERBERT J. YATES, SAMUEL GOLDWYN, HAL E. ROACH, WALTER WANGER, JOSEPH M. SCHENCK, STANLEY E. KRAMER, SOL LESSER, LEO SPITZ, DARRYL ZANNUCK, JAMES GRANGER, 31 DOE, 32 DOE, 33 DOE, 34 DOE, 35 DOE, 36 DOE, 37 DOE, 38 DOE, 39 DOE, 40 DOE, JOHN S. WOOD, FRANCIS E. WALTER, MORGAN M. MOULDER, CLYDE DOYLE, JAMES B. FRAZIER, HAROLD E. VELDE, BARNARD W. KEARNEY, DONALD L. JACKSON, CHARLES E. POTTER, LOUIS J. RUSSELL, WILLIAM WHEELER, 41 DOE, 42 DOE, 43 DOE, 44 DOE, 45 DOE, 46 DOE, 47 DOE, 48 DOE, 49 DOE, and 50 DOE, Defendants.

COMPLAINT—Filed March 10, 1953

Plaintiff Michael Wilson in this first cause of action complains of defendants above named and alleges:

I

Plaintiff is by profession a motion picture writer and has had more than five years experience in working as a writer and has acquired a reputation for excellence of work in the motion picture industry and has won high esteem as a writer in said industry, all of which defendants at all times herein mentioned well knew.

II

Defendant Loew's Incorporated is a corporation organized under the laws of the state of Delaware. Defendant Loew's [fol. 3] Incorporated is engaged in the production and distribution of motion pictures. It has principal offices in Culver City, in the County of Los Angeles, State of Cali-

fornia, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, in other States in the United States, and in London, England.

Defendant Paramount Pictures, Inc., is a corporation organized under the laws of New York. Defendant Paramount Pictures, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, State of California, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, and in other States in the United States.

Defendant Columbia Pictures Corporation is a corporation organized under the laws of New York. Defendant Columbia Pictures Corporation is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, County of Los Angeles, State of California, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, and in other States in the United States.

Defendant R.K.O. Radio Pictures, Inc. is a corporation organized under the laws of Delaware. Defendant R.K.O. Radio Pictures, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, County of Los Angeles, State of California. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, and in other States of the United States.

Defendant Warner Brothers Pictures, Inc. is a corporation organized under the laws of Delaware. Defendant War- [fol. 4] ner Brothers Pictures, Inc. is engaged in the production and distribution of motion pictures. It has princi-

pal offices in the City of Burbank, County of Los Angeles, State of California, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the distribution of motion pictures in California, in New York, and in other States in the United States.

Defendant Republic Productions, Inc. is a corporation organized under the laws of New York and Delaware. Defendant Republic Productions, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, County of Los Angeles, State of California, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California. . .

Defendant Samuel Goldwyn Studios, Inc. is a corporation organized under the laws of Delaware. Defendant Samuel Goldwyn Studios, Inc. is engaged in the production and distribution of motion pictures. Its principal office is in the City of Los Angeles, County of Los Angeles, State of California. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in Los Angeles.

Defendant Hal E. Roach Studio, Inc. is a corporation organized under the laws of California. Defendant Hal E. Roach Studio, Inc. is engaged in the production and distribution of motion pictures. Its principal office is in the City of Culver City, County of Los Angeles, State of California. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in Los Angeles.

Defendant Twentieth Century-Fox Film Corporation is a corporation organized under the laws of New York. Defendant Twentieth Century-Fox Film Corporation is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, State of [fol. 5] California, and in New York City in the State of New York. It owns and operates facilities for the produc-

tion of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, and in other States in the United States.

Defendant Universal Pictures Company, Inc. is a corporation organized under the laws of the State of Delaware. Defendant Universal Pictures Company, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in Universal City, County of Los Angeles, State of California, and in New York City, in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in Los Angeles County, California, and in New York and in other States.

Plaintiff is informed and believes and upon such information and belief alleges that defendant, Warner Bros. Pictures Distribution Corp. is a wholly owned subsidiary of defendant Warner Brothers Pictures, Inc. and is the agent of defendant Warner for the distribution of motion pictures produced by Warner Brothers Pictures, Inc. Warner Bros. Pictures Distribution Corp. has its principal offices in the State of California and in other states of the United States.

Plaintiff is informed and believes and upon such information and belief alleges that defendant Goldwyn distributes motion pictures produced by it through defendant R.K.O. Radio Pictures, Inc.; further on information and belief plaintiff alleges that defendant Hal E. Roach Studio, Inc. distributes motion pictures produced by it through Loew's Incorporated.

Defendant Wald-Krasna Productions, Inc. is a California corporation engaged in the production and distribution of motion pictures.

Defendant United States Pictures, Inc. is a California corporation engaged in the production and distribution of motion pictures.

Defendant Stanley Kramer Company is a California corporation engaged in the production and distribution of motion pictures.

Defendant Sol Lesser Productions, Inc. is a California [fol. 6] corporation engaged in the production and distribution of motion pictures.

Defendant Citadel Pictures is a California corporation engaged in the production and distribution of motion pictures.

Defendant Motion Picture Association of America, Inc., is a corporation organized by the defendant production companies named in this paragraph II. Its principal office is located in the City of Los Angeles, State of California.

Defendant Society of Independent Motion Picture Producers is a corporation with its principal office and place of business in the County of Los Angeles, State of California.

Plaintiff is informed and believes, and upon such information and belief alleges: That the defendants 1 Doe Co., a corporation; 2 Doe Co., a corporation; 3 Doe Co., a corporation; 4 Doe Co., a corporation; 5 Doe Co., a corporation; 6 Doe Co., a corporation; 7 Doe Co., a corporation; 8 Doe Co., a corporation; 9 Doe Co., a corporation; 10 Doe Co., a corporation; 11 Doe Co., a corporation; 12 Doe Co., a corporation; 13 Doe Co., a corporation; 14 Doe Co., a corporation; and 15 Doe Co., a corporation, are and each of them is a corporation duly organized and existing. 16 Doe Co. is a co-partnership composed of the defendants 17 Doe and 18 Doe, co-partners; the defendant 19 Doe Co. is a co-partnership composed of the defendants 20 Doe and 21 Doe, co-partners; the defendant 22 Doe Co. is a co-partnership composed of the defendants 23 Doe and 24 Doe, co-partners; the defendant 25 Doe Co. is a co-partnership composed of the defendants 26 Doe and 27 Doe, co-partners; the defendant 28 Doe Co. is a co-partnership composed of the defendants 29 Doe and 30 Doe, co-partners.

Plaintiff does not know the true names of the defendants sued herein under the fictitious names of 1 Doe Co., a corporation; 2 Doe Co., a corporation; 3 Doe Co., a corporation; 4 Doe Co., a corporation; 5 Doe Co., a corporation; 6 Doe Co., a corporation; 7 Doe Co., a corporation; 8 Doe Co., a corporation; 9 Doe Co., a corporation; 10 Doe Co., a corporation; 11 Doe Co., a corporation; 12 Doe Co., a corporation; 13 Doe Co., a corporation; 14 Doe Co., a

corporation; 15 Doe Co., a corporation; 16 Doe Co., a co-
[fol. 7] partnership composed of 17 Doe and 18 Doe, co-partners; 19 Doe Co., a co-partnership composed of 20 Doe and 21 Doe, co-partners; 22 Doe Co., a co-partnership composed of 23 Doe and 24 Doe, co-partners; 25 Doe Co., a co-partnership composed of 26 Doe and 27 Doe, co-partners; 28 Doe Co., a co-partnership composed of 29 Doe and 30 Doe, co-partners; 31 Doe, 32 Doe, 33 Doe, 34 Doe, 35 Doe, 36 Doe, 37 Doe, 38 Doe, 39 Doe, 40 Doe, 41 Doe, 42 Doe, 43 Doe, 44 Doe, 45 Doe, 46 Doe, 47 Doe, 48 Doe, 49 Doe, 50 Doe; on discovery of the true names of said defendants so sued under said fictitious names, plaintiff will seek leave to amend this complaint by inserting the true names of such defendants in the place and stead of such fictitious names.

Each of the defendants L. B. Mayer, Howard Hughes, E. J. Mannix, Y. Frank Freeman, Henry Ginsberg, Harry Cohn, Ben B. Kahane, Dore Schary, Harry M. Warner, Jack Warner, Herbert J. Yates, Samuel Goldwyn, Hal E. Roach, Walter Wanger, Joseph M. Schenck, Stanley E. Kramer, Sol Lesser, Leo Spitz, Daryl Zanuck and James Grainger is now, and at all times herein mentioned was a resident of the County of Los Angeles, State of California.

Between them, the said defendants control, directly and indirectly all motion picture production and distribution in the United States of America and likewise control, directly and indirectly, all motion picture employment opportunities in the United States of America for actors, writers, directors, producers and other employees in the motion picture industry.

III

At all times herein mentioned defendant John S. Wood was the chairman of the Committee on Un-American Activities, United States House of Representatives; defendants Francis E. Walter, Morgan M. Moulder, Clyde Doyle, James B. Frazier, Harold E. Velde, Barnard W. Kearney, Donald L. Jackson and Charles E. Potter were members of the said Committee; Louis J. Russell was Senior Investigator of said Committee; William Wheeler was an investigator of said Committee and 41 Doe, 42 Doe, 43 Doe,

44 Doe, 45 Doe, 46 Doe, 47 Doe, 48 Doe, 49 Doe and 50 Doe were representatives of said Committee.

At all times mentioned herein and with respect to the [fol. 8] matters hereinafter alleged the defendants named in the preceding paragraph acted both in their official capacity with relation to said House Committee on Un-American Activities and individually in non-official capacities.

IV

All of the plaintiffs herein have the right to relief herein in respect to and as a result of the same series of acts of defendants hereinafter complained of, and if the plaintiffs brought separate actions, questions both of law and of fact common to all of the parties to this action would arise.

V

On and prior to March, 1951, and continuously thereafter defendants herein and each of them conspired together and agreed with each other to blacklist and to refuse employment to and exclude from employment in the motion picture industry all employees and persons seeking employment in the motion picture industry who had been or thereafter were subpoenaed as witnesses before the Committee on Un-American Activities of the House of Representatives and who, relying on their rights and privileges under the Constitution of the United States including the privilege against self-incrimination under the Fifth Amendment to said Constitution, refused to answer questions concerning their political affiliations, associations and beliefs, and all employees in the motion picture industry and persons seeking employment therein who were named before said Committee as Communists or who were subpoenaed to appear as witnesses before said Committee or who were suspected of ever having been Communists or of ever having any associations with Communists and who refused or failed to appear before said Committee or its agents and waive and surrender their constitutional rights and privileges and testify or give statements fully disclosing their own political affiliations, associations and beliefs and those of their family, friends, associates and acquaintenances; and defendants

agreed that such employees and other persons would not be employed in the motion picture industry; thereupon defendants and each of them with the intent to prevent such employees and other persons from having or obtaining em-
[fol. 9] ployment in the motion picture industry maliciously and without justification undertook to and did induce and persuade each other and other employers in the motion picture industry to blacklist all such employees and other persons and to desist and refrain from employing and to refuse employment to all such employees and other persons. As a part of said conspiracy and as one of the means of effectuating it all of the defendants have published and circulated and are now publishing and circulating throughout the entire motion picture production, distribution and exhibition fields a blacklist containing the names of such employees and other persons with the direction and intent that they be not employed. That the defendants and each of them by this conduct wrongfully, maliciously and without justification or excuse have interfered with and injured the right of said employees and other persons reasonably to expect employment in the motion picture industry and to pursue their professions and occupations therein, and have prevented their employment therein.

VI

On the 20th day of September, 1951, plaintiff Michael Wilson appeared as a witness before the said Committee on Un-American Activities pursuant to subpoena theretofore served upon him. At said time plaintiff refused to answer certain questions concerning his political affiliations, beliefs and associations, basing his refusal upon his constitutional rights, including the privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States. As a result thereof and by reason of the acts of and pursuant to the conspiracy of the defendants, as hereinabove alleged, plaintiff Michael Wilson ever since September 20, 1951, has been and he now is blacklisted and is refused and is excluded from employment in the motion picture industry by these defendants and all other employers in said industry. Therefore, said plaintiff will henceforth continue to find it impossible to obtain em-

ployment in the profession to which he has devoted a major part of his entire life and energy, unless the injunctive relief hereinafter prayed for is granted.

VII

The refusal of plaintiffs to answer questions before said [fol. 10] Un-American Activities Committee and their refusal to appear before said Committee or its agents and waive and surrender their constitutional rights and privileges and testify or give statements fully disclosing their own political affiliations, associations and beliefs and those of their family, friends, associates and acquaintances have been and are predicated upon the position that the said Committee does not have the authority to require an individual to surrender his constitutional privileges and rights. Each of the plaintiffs intended to, were and are maintaining a political principle of freedom of political association, affiliation and belief, which at all times herein mentioned they have believed and do now believe is one protected by the Constitution of the United States. In this connection plaintiffs allege that it was and is their belief, and it is a fact that it is the purpose of the conspiracy hereinabove described to limit, control and direct the political activities of their employees and to coerce and influence said employees through and by means of threat of discharge and loss of employment to refrain from adopting or following any course or line of political action and activity not acceptable to the said Committee, to limit employment in the motion pic ire industry to those persons whose political beliefs are acceptable to the said Committee and to limit the production of motion pictures by said industry to those the content of which is acceptable to the said Committee.

VIII

By reason of the conspiracy and agreement of defendants, as aforesaid, plaintiff Michael Wilson has suffered and will continue to suffer damages as follows:

(a) For loss of opportunity of employment in the motion picture industry and deprivation of artistic and intel-

lectual gratification flowing therefrom and the resulting serious humiliation and anguish in the sum of $1,000,000.00.

(b) Said plaintiff has been required to and will in the future be required to make known the reasons for his blacklisting and inability to obtain employment in the motion [fol. 11] picture industry thus jeopardizing his opportunities to obtain and retain employment in other industries in the future to his damage in the sum of $250,000.00.

(c) Defendants in doing the acts hereinabove alleged have acted maliciously, oppressively, wilfully, fraudulently and wantonly, and by reason thereof defendants should be required to pay plaintiff Michael Wilson punitive damages in the sum of $1,000,000.00.

IX

The full measure of damages suffered by plaintiffs by reason of the conduct of defendants hereinabove set forth are not readily ascertainable and such damages cannot be measured in terms of money damages alone; defendants by their conduct, as aforesaid, threaten great and irreparable damage to all of the plaintiffs and to all employees of the motion picture industry and persons seeking employment therein similarly situated; such conduct of defendants will lead to a multiplicity of suits unless restrained and enjoined by this Court; defendants threaten to and will, unless restrained by this Court, continue to commit the acts hereinabove alleged, and plaintiffs and each of them are without any plain, speedy or adequate remedy at law.

(Clerk's Note. Entered Pursuant to Stipulation of Counsel)

"The second to eighteenth causes of action, inclusive, and the twenty-third cause of action in said complaint are identical with the first cause of action except for the name of the plaintiff in each cause of action, his or her number of years of experience and his or her profession, and the date of the appearance of each plaintiff before the House Committee on Un-Ameri-

can Activities. The facts as alleged on each of these matters are set forth in the table below:

Cause of Action No.	Name of Plaintiff	Occupation of Plaintiff in Motion Pictures and Length of Experience	Date of Committee Appearance
2nd	Gale Sondergard	Actress, 25 yrs.	March 1951
3rd	Howard Da Silva	Actor, 10 yrs.	Mar. 22, 1951
4th	John Howland Chamberlin	Actor, 5 yrs.	Sept. 19, 1951
5th	Fred Graf	Actor, 7 yrs.	Apr. 11, 1951
6th	Alvin Hammer	Actor, 10 yrs.	May 16, 1951
7th	Donald A. Gordon	Story Editor 20 yrs.	Sept. 25, 1951
8th	Robert Lees	Writer, 15 yrs.	Apr. 11, 1951
9th	Robert L. Richards	Writer, 10 yrs.	Sept. 20, 1951
10th	Waldo Salt	Writer, 15 yrs.	Apr. 13, 1951
11th	Philip Stevenson	Writer, 5 yrs.	Sept. 19, 1951
12th	Louise Rousseau	Writer, 5 yrs.	Sept. 21, 1951
13th	Alfred Lewis Levitt	Writer, 10 yrs.	Sept. 1951
14th	Paul Jarrico	Writer, 10 yrs.	Apr. 13, 1951
15th	Abraham Lincoln Polonsky	Writer, 5 yrs.	April 1951
16th	Wilma Shore	Writer, 5 yrs.	Sept. 18, 1951
17th	Herta Uerkvitz	Head Research Worker, 15 yrs.	Sept. 21, 1951
18th	Paul Perlin	Grip, 15 yrs.	Oct. 5, 1952
23rd	Anne Revere	Actress, 10 yrs.	Apr. 17, 1951."

[fol. 35]

Plaintiff Guy Endore in This Nineteenth Cause of Action Complains of Defendants Above Named and Alleges:

I

Plaintiff repeats and incorporates herein, as if herein fully rewritten, paragraphs II, III, IV, V, VII and IX of the first cause of action hereof.

II

Plaintiff is by profession a motion picture writer and has had more than five years experience in working as a writer and has acquired a reputation for excellence of work in the motion picture industry and has won high esteem as a writer in said industry, all of which defendants at all times herein mentioned well knew.

[fol. 36]

III

During the month of November, 1951, plaintiff Guy Endore was named as a Communist by a witness appearing before the said Committee on Un-American Activities. At all times plaintiff has failed and refused to appear before the said committee to answer questions concerning his political affiliations, beliefs and associations, basing his refusal upon his constitutional rights, including the privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States. As a result thereof and by reason of the acts of and pursuant to the conspiracy of the defendants, as hereinabove alleged, plaintiff Guy Endore ever since November, 1951, has been and he now is blacklisted and is refused and is excluded from employment in the motion picture industry by these defendants and all other employers in said industry. Therefore, said plaintiff will henceforth continue to find it impossible to obtain employment in the profession to which he has devoted a major part of his entire life and energy, unless the injunctive relief hereinafter prayed for is granted.

IV

By reason of the conspiracy and agreement of defendants as aforesaid, plaintiff Guy Endore has suffered and will continue to suffer damages as follows:

(a) For loss of opportunity of employment in the motion picture industry and deprivation of artistic and intellectual gratification flowing therefrom and the resulting humiliation and anguish, to his damage in the sum of $1,000,000.00.

(b) Said plaintiff has been required to make known the reasons for his blacklisting and inability to obtain employment in the motion picture industry thus jeopardizing his opportunity to obtain and retain employment in other industries in the future to his damage in the sum of $250,000.00.

(c) Defendants in doing the acts hereinabove alleged have acted maliciously, oppressively, wilfully, fraudulently

and wantonly and by reason thereof defendants should be required to pay plaintiff Guy Endore punitive damages [fol. 37] in the sum of $1,000,000.00.

(Clerk's Note. Entered Pursuant to Stipulation of Counsel)

"The 20th, 21st and 22nd causes of action in said complaint are identical with the 19th cause of action except for the name of the plaintiff in each cause of action, his or her number of years of experience and his or her profession, and the date of the appearance of each plaintiff before the House Committee on Un-American Activities. The facts as alleged on each of these matters are set forth in the table below:

Cause of Action No.	Name of Plaintiff	Occupation of Plaintiff in Motion Pictures and Length of Experience	Date of Committee Appearance
20th	Edward F. Huebsch	Writer, 5 yrs.	Spring 1951
21st	Frederic I. Rinaldo	Writer, 15 yrs.	January 1951
22nd	Louis Solomon	Writer, 5 yrs.	February 1951"

[fol. 42]

WHEREFORE, plaintiffs and each of them pray judgment against the defendants and each of them as follows:

1. For money damages in the amount of:

(a) $2,250,000.00 on the first cause of action;
(b) $2,250,000.00 on the second cause of action;
(c) $2,250,000.00 on the third cause of action;
(d) $2,250,000.00 on the fourth cause of action;
(e) $2,250,000.00 on the fifth cause of action;
(f) $2,250,000.00 on the sixth cause of action;
(g) $2,250,000.00 on the seventh cause of action;
(h) $2,250,000.00 on the eighth cause of action;
(i) $2,250,000.00 on the ninth cause of action;
[fol. 43] (j) $2,250,000.00 on the tenth cause of action;

(k) $2,250,000.00 on the eleventh cause of action;
(l) $2,250,000.00 on the twelfth cause of action;
(m) $2,250,000.00 on the thirteenth cause of action;
(n) $2,250,000.00 on the fourteenth cause of action;
(o) $2,250,000.00 on the fifteenth cause of action;
(p) $2,250,000.00 on the sixteenth cause of action;
(q) $2,250,000.00 on the seventeenth cause of action;
(r) $2,250,000.00 on the eighteenth cause of action;
(s) $2,250,000.00 on the nineteenth cause of action;
(t) $2,250,000.00 on the twentieth cause of action;
(u) $2,250,000.00 on the twenty-first cause of action;
(v) $2,250,000.00 on the twenty-second cause of action;
(w) $2,250,000.00 on the twenty-third cause of action.

2. For a permanent injunction perpetually restraining and enjoining the defendants herein, and each of them, their agents, servants or representatives, directly or indirectly by any means, method or device whatsoever (a) from maintaining any blacklist or policy of blacklisting or discriminating against the plaintiffs or any of them or others similarly situated with respect to employment in the motion picture industry; (b) from making, adopting or enforcing any rule, regulation or policy forbidding or preventing the plaintiffs and others similarly situated from claiming and relying upon their constitutional rights and privileges before the House Committee on Un-American Activities or before any other investigating committee, tribunal or other body; (c) from controlling or directing or attempting to control or direct the political activities of the plaintiffs or any of the employees of the motion picture producer defendants in any manner whatsoever; (d) from maintaining or enforcing in any way or for any purpose the combination and conspiracy referred to in the complaint herein for the purpose of or with the effect of discriminating in employment against the plaintiffs or any other persons.

3. For an order directing defendants herein to show [fol. 44] cause at a time and place designated in said order why they and each of them should not be enjoined and restrained during the pendency of this action from doing any of the things or acts set forth in paragraph 2 of this prayer.

4. For costs of suit herein.

5. For such other and further relief as the Court may deem just and equitable in the premises.

Kenny and Morris, By: Robert W. Kenny.
Margolis, McTernan and Branton, By: Ben Margolis.
Thomas G. Neusom.
William B. Esterman, Attorneys for Plaintiffs.

[fol. 45]
Duly sworn to by Edward F. Huebsch (jurat omitted in printing).

[fol. 46] In the Superior Court of the State of California in and for the County of Los Angeles. No. 610,835.

Michael Wilson, et al., Plaintiffs, vs. Loew's Incorporated, a corporation, et al., Defendants.

DEMURRER TO COMPLAINT

Come now the defendants Loew's Incorporated, Paramount Pictures, Inc., Columbia Pictures Corporation, R.K.O. Radio Pictures, Inc., Warner Brothers Pictures, Inc., Republic Productions, Inc., Hal E. Roach Studios, Inc., T.C.F. Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.) Universal Pictures Company, Inc. (sued herein as Universal Pictures Company), Warner Bros. Pictures Distributing Corp., United States Pictures, Inc., Sol Lesser Productions, Inc., Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.), E. B. Mannix, Dore Schary, Harry M. Warner and Jack Warner, and each for itself or himself, as the case may be, and not for any other of the defendants, demurs as hereinafter set out to the complaint herein and separately to each of the causes of action thereof upon each of the following grounds:

I.

That said complaint does not state facts sufficient to constitute a cause of action against the demurring defendant.

FIRST CAUSE OF ACTION
(Wilson, Page 2 of Complaint)

II.

That the first cause of action of said complaint does not state facts sufficient to constitute a cause of action against the demurring defendant.

[fol. 47] III.

That the first cause of action of said complaint is uncertain in each of the following respects:

(a) The relationship of the individual defendants to the acts of which plaintiff complains cannot be ascertained and it cannot be determined whether each individual defendant acted as therein alleged in his individual capacity or as the employee of one or another of the corporate defendants.

(b) It cannot be ascertained how or in what manner plaintiff was injured by the alleged agreement of any individual defendant not to employ the persons whom it is alleged the individual defendants agreed not to employ.

(c) It cannot be ascertained whether plaintiff was named before the Committee as a Communist.

(d) It cannot be ascertained whether plaintiff was suspected of ever having been a Communist.

(e) It cannot be ascertained whether plaintiff was suspected of ever having any associations with Communists.

(f) It cannot be ascertained whether plaintiff was asked by the Committee whether plaintiff was a Communist.

(g) It cannot be ascertained whether plaintiff was asked by the Committee as to whether plaintiff was a Communist and refused or failed to answer the question.

(h) It cannot be ascertained how plaintiff was injured by the alleged agreement of the demurring defendant not to employ persons who were named before the Committee as Communists or who were suspected of ever having been Communists or of ever having any associations with Communists and who refused or failed to appear before said

Committee or its agents and waive and surrender their [fol. 48] alleged constitutional rights and privileges and testify or give statements fully disclosing their own political affiliations, associations and beliefs and those of their family, friends, associates and acquaintances.

(i) It cannot be ascertained how or in what manner plaintiff was injured by any alleged agreement of demurring defendant not to employ any person who refused to testify or give statements before the Committee disclosing the political affiliations, associations and beliefs of their family, friends, associates and acquaintances.

(j) It cannot be ascertained upon what rights or privileges under the Constitution, in addition to the privilege against self-incrimination, plaintiff relief in refusing to answer the questions addressed to plaintiff by the Committee.

(k) It cannot be ascertained what justified plaintiff in relying on the privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States in refusing to answer questions concerning plaintiff's political affiliations, associations and beliefs or whether plaintiff was justified in refusing to answer such questions under said Fifth Amendment.

(l) It cannot be ascertained how or in what manner any questions addressed to plaintiff by the Committee related to plaintiff's political affiliations, associations or beliefs.

(m) It cannot be determined how or in what manner the demurring defendant acted wrongfully, maliciously or without justification in doing those things alleged to have been done by such defendant.

(n) It does not appear how the alleged position of plaintiffs that the Committee does not have the authority [fol. 49] to require an individual to surrender his constitutional privileges and rights justified the plaintiffs in refusing to answer the questions addressed to them by the Committee.

(o) It does not appear how plaintiffs intended to, were or are maintaining a political principle by conducting themselves as they did.

(p) It does not appear how or in what manner the alleged conspiracy seeks to limit, control or direct any political activities of the employees of the defendants or any of them.

(q) It does not appear how the alleged conspiracy is intended to coerce the employees of defendants from adopting or following any line of political action or activity not acceptable to the Committee or to limit employment in the motion picture industry to persons whose political beliefs are acceptable to the Committee.

(r) It does not appear how the alleged conspiracy, through any acts alleged to have been done or alleged to be intended by it will limit the production of motion pictures by said industry to those the content of which is acceptable to the said Committee.

(s) It cannot be ascertained how the alleged conspiracy to limit, control or direct any political activities of the employees of defendants or to coerce and influence such employees, through and by means of threat of discharge and loss of employment, to refrain from adopting or following any line of political action or activity not acceptable to the Committee has injured or will injure plaintiff.

(t) It cannot be ascertained how the alleged conspiracy to limit employment in the motion picture industry to persons whose political beliefs are acceptable to the Committee will injure plaintiff.

[fol. 50] (u) It cannot be ascertained how the alleged conspiracy to limit the production of motion pictures by the motion picture industry to those of which the content is acceptable to the Committee will injure plaintiff.

(v) It does not appear how the employment by the motion picture industry of the persons to whom it is alleged the conspiracy denies employment would result in the production of motion pictures by the industry with content which would be unacceptable to the Committee.

(w) It cannot be ascertained how or to what extent the alleged acts of demurring defendant have deprived plaintiff of any loss of opportunity of employment in the motion

picture industry to which plaintiff was entitled or how any damage resulting from such deprivation can be determined to be the sum alleged by plaintiff or any other sum.

(x) It cannot be ascertained how or to what extent the alleged acts of demurring defendant have deprived plaintiff of any artistic or intellectual gratification to which plaintiff was entitled or how any damage resulting from said deprivation can be determined to be the sum alleged by plaintiff or any other sum.

(y) It cannot be ascertained how or to what extent the alleged acts of the demurring defendant caused plaintiff to suffer the alleged humiliation or anguish or how any damages in that regard can be determined to be the sum alleged by plaintiff or any other sum.

(z) It cannot be ascertained how being required to make known the reasons for plaintiff's alleged blacklisting or inability to obtain employment in the motion picture industry has jeopardized plaintiff's opportunities or will jeopardize plaintiff's opportunities to obtain or retain em- [fol. 51] ployment in other industries or how any damages in that regard can be determined to be the sum alleged by plaintiff or any other sum.

(aa) It cannot be ascertained how or in what manner the demurring defendant acted maliciously, oppressively, wilfully, fraudulently or wantonly in doing those things alleged to have been done by such defendant.

(ab) It cannot be ascertained why the demurring defendant should be required to pay plaintiff punitive damages in any sum.

(ac) It cannot be ascertained why the full measure of damages alleged to have been suffered by plaintiff by reason of the alleged conduct of demurring defendant is not readily ascertainable or cannot be determined in terms of money.

(ad) It cannot be ascertained with what demurring defendant is charged by the allegation that plaintiff has been blacklisted.

(ae) It cannot be ascertained how the alleged acts of demurring defendant threaten great or irreparable damage to plaintiff or to any persons seeking employment who are similarly situated.

(af) The political activities, associations or beliefs of plaintiff cannot be ascertained nor can there be determined the difference between such activities, associations and beliefs and those of the Committee.

IV.

That the first cause of action of the complaint is ambiguous for the same reasons that it is uncertain, as hereinbefore set out.

[fol. 52]

V.

That the first cause of action of the complaint is unintelligible for the same reasons that it is uncertain, as hereinbefore set out.

(Clerk's Note. Inserted Pursuant to Stipulation of Counsel)

"The demurrer to the second to eighteenth causes of action, inclusive, and to the 23rd cause of action is identical as to each cause of action with the demurrer to the first cause of action."

[fol. 53]

NINETEENTH CAUSE OF ACTION
(Endore, Page 35 of Complaint)

LXXIV.

That the nineteen- cause of action of said complaint does not state facts sufficient to constitute a cause of action against the demurring defendant.

[fol. 54] LXXV.

That the nineteenth cause of action is uncertain in each of the following respects:

(a) The relationship of the individual defendants to the acts of which plaintiff complains cannot be ascertained and it cannot be determined whether each individual defendant acted as therein alleged in his individual capacity or as the employee of one or another of the corporate defendants.

(b) It cannot be ascertained how or in what manner plaintiff was injured by the alleged agreement of any individual defendant not to employ the persons whom it is alleged in Paragraph V the individual defendants agreed not to employ.

(c) It cannot be ascertained whether plaintiff was suspected of ever having any associations with Communists.

(d) It cannot be determined whether plaintiff was subpoenaed to appear before the Committee.

(e) It cannot be ascertained whether plaintiff appeared before the Committee.

(f) It cannot be ascertained whether plaintiff was asked by the Committee whether plaintiff was a Communist.

(g) It cannot be ascertained whether plaintiff was asked by the Committee as to whether plaintiff was a Communist and refused or failed to answer the question.

(h) It cannot be ascertained how plaintiff was injured by the alleged agreement of the demurring defendant not to employ persons who were subpoenaed as witnesses before the Committee and who refused to answer questions concerning their political affiliations, associations and beliefs.

[fol. 55] (i) It cannot be ascertained how plaintiff was injured by the alleged agreement of demurring defendant not to employ persons who were subpoenaed to appear as witnesses before the Committee and who refused or failed to appear before the Committee or its agents and waive

or surrender their alleged constitutional rights and privileges and testify or give statements disclosing their own political affiliations, associations and beliefs and those of their family, friends, associates and acquaintances.

(j) It cannot be ascertained how or in what manner plaintiff was injured by any alleged agreement of demurring defendant not to employ any person who refused to testify or give statements before the Committee disclosing the political affiliations, associations and beliefs of their family, friends, associates and acquaintances.

(k) It cannot be ascertained upon what constitutional rights other than the privilege against self-incrimination plaintiff refused to appear before the Committee and answer questions concerning plaintiff's political affiliations, beliefs and associations.

(l) It cannot be ascertained what justified plaintiff in relying on the privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States in refusing to appear before the Committee to answer questions concerning plaintiff's political affiliations, beliefs and associations.

(m) It cannot be ascertained how or in what manner the questions which plaintiff refused to answer were related to plaintiff's political affiliations, beliefs or associations.

(n) It cannot be determined how or in what manner the demurring defendant acted wrongfully, maliciously or [fol. 56] without justification in doing those things alleged to have been done by such defendant.

(o) It does not appear how the alleged position of plaintiff that the Committee does not have the authority to require an individual to surrender his constitutional privileges and rights justified plaintiff in failing or refusing to appear before the Committee.

(p) It does not appear how plaintiff intended to maintain, was or is maintaining a political principle by plaintiff's conduct as alleged.

(q) It does not appear how or in what manner the alleged conspiracy seeks to limit, control or direct any political activities of the employees of the defendants or any of them.

(r) It does not appear how the alleged conspiracy is intended to coerce the employees of defendants from adopting or following any line of political action or activity not acceptable to the Committee or to limit employment in the motion picture industry to persons whose political beliefs are acceptable to the Committee.

(s) It does not appear how the alleged conspiracy, through any acts alleged to have been done or alleged to be intended by it will limit the production of motion pictures by said industry to those the content of which is acceptable to the said Committee.

(t) It cannot be ascertained how the alleged conspiracy to limit, control or direct any political activities of the employees of defendants, or to coerce and influence such employees, through and by means of threat of discharge and loss of employment, to refrain from adopting or following any line of political action or activity not acceptable to the Committee, has injured or will injure plaintiff.

[fol. 57] (u) It cannot be ascertained how the alleged conspiracy to limit employment in the motion picture industry to persons whose political beliefs are acceptable to the Committee will injure plaintiff.

(v) It cannot be ascertained how the alleged conspiracy to limit the production of motion pictures by the motion picture industry to those of which the content is acceptable to the Committee will injure plaintiff.

(w) It does not appear how the employment by the motion picture industry of the persons to whom it is alleged the conspiracy denies employment would result in the production of motion pictures by the industry with content which would be unacceptable to the Committee.

(x) It cannot be ascertained how or to what extent the alleged acts of demurring defendant have deprived plaintiff of any loss of opportunity of employment in the mo-

tion picture industry to which plaintiff was entitled or how any damage resulting from such deprivation can be determined to be the sum alleged by plaintiff or any other sum.

(y) It cannot be ascertained how or to what extent the alleged acts of demurring defendant have deprived plaintiff of any artistic or intellectual gratification to which plaintiff was entitled or how any damage resulting from said deprivation can be determined to be the sum alleged by plaintiff or any other sum.

(z) It cannot be ascertained how or to what extent the alleged acts of the demurring defendant caused plaintiff to suffer the alleged humiliation or anguish or how any damages in that regard can be determined to be the sum alleged by plaintiff or any other sum.

(aa) It cannot be ascertained how being required to make known the reasons for plaintiff's alleged blacklisting [fol. 58] or inability to obtain employment in the motion picture industry has jeopardized plaintiff's opportunities or will jeopardize plaintiff's opportunities to obtain or retain employment in other industries or how any damages in that regard can be determined to be the sum alleged by plaintiff or any other sum.

(ab) It cannot be ascertained how or in what manner the demurring defendant acted maliciously, oppressively, wilfully, fraudulently or wantonly in doing those things alleged to have been done by such defendant.

(ac) It cannot be ascertained why the demurring defendant should be required to pay plaintiff punitive damages in any sum.

(ad) It cannot be ascertained why the full measure of damages alleged to have been suffered by plaintiff by reason of the alleged conduct of demurring defendant is not readily ascertainable or cannot be determined in terms of money.

(ae) It cannot be ascertained with what demurring defendant is charged by the allegation that plaintiff has been black-listed.

(af) It cannot be ascertained how the alleged acts of demurring defendant threaten great or irreparable damage to plaintiff or to any persons seeking employment who are similarly situated.

(ag) The political activities, associations or beliefs of plaintiff cannot be ascertained nor can there be determined the difference between such activities, associations and beliefs and those of the Committee.

[fol. 59] LXXVI.

That the nineteenth cause of action of the complaint is ambiguous for the same reasons that it is uncertain, as hereinbefore set out.

LXXVII.

That the nineteenth cause of action of the complaint is unintelligible for the same reasons that it is uncertain, as hereinbefore set out.

(Clerk's Note. Entered Pursuant to Stipulation of Counsel)

"The demurrer to the 20th, 21st and 22nd causes of action is identical with that to the 19th cause of action."

* * * * * * *

[fol. 60] Wherefore, each of the demurring defendants prays that plaintiffs take nothing by their complaint and that such defendant have judgment for his costs incurred herein.

Irving M. Walker, Herman F. Selvin, By Irving M. Walker, Attorneys for defendant Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.).

Loeb and Loeb, By Irving M. Walker, Attorneys for defendants Loew's Incorporated, Republic Productions, Inc., Sol Lesser Productions, Inc., E. B. Mannix and Dore Schary.

O'Melveny & Myers, By Irving M. Walker, Attorneys for defendant Paramount Pictures, Inc.

Mitchell, Silberberg & Knupp, By Irving M. Walker, Attorneys for defendants Columbia Pictures Corporation, R.K.O. Radio Pictures, Inc. and Hal E. Roach Studios, Inc.

[fol. 61] Freston & Files, By Irving M. Walker, Attorneys for defendants Warner Brothers Pictures, Inc., Warner Bros. Pictures Distributing Corp., Harry M. Warner and Jack Warner.

Wright, Peeler & Garrett, By Irving M. Walker, Attorneys for defendant T.C.F. Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.).

Joseph S. Dubin, By Irving M. Walker, Attorney for defendant Universal Pictures Company, Inc. (sued herein as Universal Pictures Company).

Oliver B. Schwab, By Irving M. Walker, Attorney for defendant United States Pictures, Inc.

I hereby certify that I am attorney for one of the defendants herein; that this demurre is made in good faith and in my opinion is well taken.

Irving M. Walker

N.B. A Notice of Motion to Strike, specifying July 17, 1953, for hearing is being filed concurrently with this Demurrer.

[fol. 62] In the Superior Court of the State of California, In and for the County of Los Angeles

Excerpt From Memorandum of Points and Authorities in Support of Demurrer and Motion to Strike

III.

The complaint does not state facts sufficient to constitute a cause of action for interference with business relations. No existing contract between plaintiffs and any of the defendants is alleged. Consequently, there must be shown a reasonable probability that, but for the alleged interference, business relations between the parties would have been entered into. It is not enough that plaintiffs

hoped or even expected that such relations might eventuate, the fact that they would have eventuated must appear.

"Before recovery can be had for interference with and loss of a prospective business relationship or contract, it is held that it must appear that such relationship or contract would otherwise have been entered into."

Annotation, 9 A. L. R. 2d 256-257, and cases there cited.

[fol. 64] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

[Title omitted]

MINUTE ORDER OF OCTOBER 5, 1953

General Demurrers (22) to Each Cause of Action Sustained, 30 Days to Amend

Demurrer of defendants Loew's Incorporated, Paramount Pictures, Inc., Columbia Pictures Corporation, RKO Radio Pictures, Inc., Warner Brothers Pictures, Inc., Republic Productions, Inc., Hal E. Roach Studios, Inc., TCF Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.), Universal Pictures Company, Inc. (sued herein as Universal Pictures Company), Warner Bros. Pictures Distributing Corp., United States Pictures, Inc., Sol Lesser Productions, Inc., Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.), E. B. Mannix, Dore Schary, Harry M. Warner and Jack Warner, to complaint. (Submitted July 17, 1953)

Motion Off Calendar

Motion of defendants Loew's Incorporated, Paramount Pictures, Inc., Columbia Pictures Corporation, RKO Radio Pictures, Inc., Warner Brothers Pictures, Inc., Republic Productions, Inc., Hal E. Roach Studios, Inc., TCF Film

Corporation (sued herein as Twentieth Century-Fox, Inc.), Universal Pictures Company, Inc. (sued herein as Universal Pictures Company), Warner Bros. Pictures Distributing Corp., United States Pictures, Inc., Sol Lesser Productions, Inc., Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.), E. B. Mannix, Dore Schary, Harry M. Warner and Jack Warner, to strike from complaint.

(Submitted July 17, 1953)

[fol. 65] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

No. 610835

[Title omitted]

FIRST AMENDED COMPLAINT—Filed October 19, 1953

[fol. 66]

* * * * * * *

Plaintiff Michael Wilson in this first cause of action complains of defendants above named and alleges:

I

Plaintiff is by profession a motion picture writer and has had more than five years experience in working as a writer and has acquired a reputation for excellence of work in the motion picture industry and has won high esteem as a writer in said industry, all of which defendants at all times herein mentioned well knew.

II

Defendant Loew's Incorporated is a corporation organized under the laws of the state of Delaware. Defendant Loew's Incorporated is engaged in the production and dis-
[fol. 67] tribution of motion pictures. It has principal offices in Culver City, in the County of Los Angeles, State of California, and in New York City in the State of New York. It owns and operates facilities for the production

of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, in other States in the United States, and in London, England.

Defendant Paramount Pictures, Inc., is a corporation organized under the laws of New York. Defendant Paramount Pictures, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, State of California, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, and in other States in the United States.

Defendant Columbia Pictures Corporation is a corporation organized under the laws of New York. Defendant Columbia Pictures Corporation is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, County of Los Angeles, State of California, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, and in other States in the United States.

Defendant R.K.O. Radio Pictures, Inc. is a corporation organized under the laws of Delaware. Defendant R.K.O. Radio Pictures, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, County of Los Angeles, State of California. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California, in New York, and in other States of the United States.

Defendant Warner Brothers Pictures, Inc. is a corporation organized under the laws of Delaware. Defendant [fol. 68] Warner Brothers Pictures, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in the City of Burbank, County of Los Angeles, State of California, and in New York City in the

State of New York. It owns and operates facilities for the production of motion pictures and for the distribution of motion pictures in California, in New York, and in other States in the United States.

Defendant Republic Productions, Inc. is a corporation organized under the laws of New York and Delaware. Defendant Republic Productions, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, County of Los Angeles, State of California, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in California.

Defendant Samuel Goldwyn Studios, Inc. is a corporation organized under the laws of Delaware. Defendant Samuel Goldwyn Studios, Inc. is engaged in the production and distribution of motion pictures. Its principal office is in the City of Los Angeles, County of Los Angeles, State of California. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in Los Angeles.

Defendant Hal E. Roach Studio, Inc. is a corporation organized under the laws of California. Defendant Hal E. Roach Studio, Inc. is engaged in the production and distribution of motion pictures. Its principal office is in the City of Culver City, County of Los Angeles, State of California. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in Los Angeles.

Defendant Twentieth Century-Fox Film Corporation is a corporation organized under the laws of New York. Defendant Twentieth Century-Fox Film Corporation is engaged in the production and distribution of motion pictures. It has principal offices in the City of Los Angeles, State of [fol. 69] California, and in New York City in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion

pictures in California, in New York, and in other States in the United States.

Defendant Universal Pictures Company, Inc. is a corporation organized under the laws of the State of Delaware. Defendant Universal Pictures Company, Inc. is engaged in the production and distribution of motion pictures. It has principal offices in Universal City, County of Los Angeles, State of California, and in New York City, in the State of New York. It owns and operates facilities for the production of motion pictures and for the rendition of services incidental to the production and the distribution of motion pictures in Los Angeles County, California, and in New York and in other States.

Plaintiff is informed and believes and upon such information and belief alleges that defendant, Warner Bros. Pictures Distribution Corp. is a wholly owned subsidiary of defendant Warner Brothers Pictures, Inc. and is the agent of defendant Warner for the distribution of motion pictures produced by Warner Brothers Pictures, Inc. Warner Bros. Pictures Distribution Corp. has its principal offices in the State of California and in other states of the United States.

Plaintiff is informed and believes and upon such information and belief alleges that defendant Goldwyn distributes motion pictures produced by it through defendant R.K.O. Radio Pictures, Inc.; further on information and belief plaintiff alleges that defendant Hal E. Roach Studio, Inc. distributes motion pictures produced by it through Loew's Incorporated.

Defendant Wald-Krasna Productions, Inc. is a California corporation engaged in the production and distribution of motion pictures.

Defendant United States Pictures, Inc. is a California corporation engaged in the production and distribution of motion pictures.

Defendant Stanley Kramer Company is a California corporation engaged in the production and distribution of motion pictures.

Defendant Sol Lesser Productions, Inc. is a California [fol. 70] corporation engaged in the production and distribution of motion pictures.

Defendant Citadel Pictures is a California corporation engaged in the production and distribution of motion pictures.

Defendant Motion Picture Association of America, Inc., is a corporation organized by the defendant production companies named in this paragraph II. Its principal office is located in the City of Los Angeles, State of California.

Defendant Society of Independent Motion Picture Producers is a corporation with its principal office and place of business in the County of Los Angeles, State of California.

Plaintiff is informed and believes, and upon such information and belief alleges: That the defendants 1 Doe Co., a corporation; 2 Doe Co., a corporation; 3 Doe Co., a corporation; 4 Doe Co., a corporation; 5 Doe Co., a corporation; 6 Doe Co., a corporation; 7 Doe Co., a corporation; 8 Doe Co., a corporation; 9 Doe Co., a corporation; 10 Doe Co., a corporation; 11 Doe Co., a corporation; 12 Doe Co., a corporation; 13 Doe Co., a corporation; 14 Doe Co., a corporation; and 15 Doe Co., a corporation, are and each of them is a corporation duly organized and existing. 16 Doe Co. is a co-partnership composed of the defendants 17 Doe and 18 Doe, co-partners; the defendant 19 Doe Co. is a co-partnership composed of the defendants 20 Doe and 21 Doe, co-partners; the defendant 22 Doe Co. is a co-partnership composed of the defendants 23 Doe and 24 Doe, co-partners; the defendant 25 Doe Co. is a co-partnership composed of the defendants 26 Doe and 27 Doe, co-partners; the defendant 28 Doe Co. is a co-partnership composed of the defendants 29 Doe and 30 Doe, co-partners.

Plaintiff does not know the true names of the defendants sued herein under the fictitious names of 1 Doe Co., a corporation; 2 Doe Co., a corporation; 3 Doe Co., a corporation; 4 Doe Co., a corporation; 5 Doe Co., a corporation; 6 Doe Co., a corporation; 7 Doe Co., a corporation; 8 Doe Co., a corporation; 9 Doe Co., a corporation; 10 Doe Co., a corporation; 11 Doe Co., a corporation; 12 Doe Co., a corporation; 13 Doe Co., a corporation; 14 Doe Co., a corporation; 15 Doe Co., a corporation; 16 Doe Co., a co-
[fol. 71] partnership composed of 17 Doe and 18 Doe, co-partners; 19 Doe Co., a co-partnership composed of 20 Doe

and 21 Doe, co-partners; 22 Doe Co., a co-partnership composed of 23 Doe and 24 Doe, co-partners; 25 Doe Co., a co-partnership composed of 26 Doe and 27 Doe, co-partners; 28 Doe Co., a co-partnership composed of 29 Doe and 30 Doe, co-partners; 31 Doe, 32 Doe, 33 Doe, 34 Doe, 35 Doe, 36 Doe, 37 Doe, 38 Doe, 39 Doe, 40 Doe, 41 Doe, 42 Doe, 43 Doe, 44 Doe, 45 Doe, 46 Doe, 47 Doe, 48 Doe, 49 Doe, 50 Doe; on discovery of the true names of said defendants so sued under said fictitious names, plaintiff will seek leave to amend this complaint by inserting the true names of such defendants in the place and stead of such fictitious names.

Each of the defendants L.B. Mayer, Howard Hughes, E. J. Mannix, Y. Frank Freeman, Henry Ginsberg, Harry Cohn, Ben B. Kahane, Dore Schary, Harry M. Warner, Jack Warner, Herbert J. Yates, Samuel Goldwyn, Hal E. Roach, Walter Wanger, Joseph M. Schenck, Stanley E. Kramer, Sol Lesser, Leo Spitz, Daryl Zanuck and James Grainger is now, and at all times herein mentioned was a resident of the County of Los Angeles, State of California.

Between them, the said defendants control, directly and indirectly all motion picture production and distribution in the United States of America and likewise control, directly and indirectly, all motion picture employment opportunities in the United States of America for actors, writers, directors, producers and other employees in the motion picture industry.

III

At all times herein mentioned defendant John S. Wood was the chairman of the Committee on Un-American Activities, United States House of Representatives; defendants Francis E. Walter, Morgan M. Moulder, Clyde Doyle, James B. Frazier, Harold E. Velde, Barnard W. Kearney, Donald L. Jackson and Charles E. Potter were members of the said Committee; Louis J. Russell was Senior Investigator of said Committee; William Wheeler was an investigator of said Committee and 41 Doe, 42 Doe, 43 Doe, 44 Doe, 45 Doe, 46 Doe, 47 Doe, 48 Doe, 49 Doe and 50 Doe were representatives of said Committee.

At all times mentioned herein and with respect to the [fol. 72] matters hereinafter alleged the defendants named

in the preceding paragraph acted both in their official capacity with relation to said House Committee on Un-American Activities and individually in non-official capacities.

IV

All of the plaintiffs herein have the right to relief herein in respect to and as a result of the same series of acts of defendants hereinafter complained of, and if the plaintiffs brought separate actions, questions both of law and of fact common to all of the parties to this action would arise.

V

On and prior to March, 1951, and continuously thereafter defendants and each of them agreed with each other to refuse employment to and exclude from employment in the motion picture industry all employees and persons seeking employment in the motion picture industry who had been or thereafter were subpoenaed as witnesses before the Committee on Un-American Activities of the House of Representatives and who, relying on their rights and privileges under the Constitution of the United States including the privilege against self-incrimination under the Fifth Amendment to said Constitution, refused to answer questions concerning their political affiliations, associations and beliefs, and all employees in the motion picture industry and persons seeking employment therein who were named before said Committee as Communists or who were subpoen-ed to appear as witnesses before said Committee or who were suspected of ever having been Communists or of ever having any associations with Communists and who refused or failed to appear before said Committee or its agents and waive and surrender their constitutional rights and privileges and testify or give statements fully disclosing their own political affiliations, associations and beliefs and those of their family, friends, associates and acquaintances; and defendants agreed that [fol. 73] such employees and other persons would not be employed in the motion picture industry; thereupon defendants and each of them with the intent to prevent such employees and other persons from having or obtaining

employment in the motion picture industry maliciously and without justification undertook to and did induce and persuade each other and other employers in the motion picture industry to desist and refrain from employing and to refuse employment to all such employees and other persons. As a part of said agreement and as one of the means of effectuating it all of the defendants have published and circulated and are now publishing and circulating throughout the entire motion picture production, distribution and exhibition fields a list containing the names of such employees and other persons with the direction and intent that they be not employed. That the defendants and each of them by this conduct wrongfully, maliciously and without justification or excuse have interfered with and injured the right of said employees and other persons reasonably to expect employment in the motion picture industry and to pursue their professions and occupations therein, and have prevented their employment therein.

VI

On the 20th day of September, 1951, plaintiff Michael Wilson appeared as a witness before the said Committee on Un-American Activities pursuant to subpoena theretofore served upon him. At said time plaintiff refused to answer certain questions concerning his political affiliations, beliefs and associations, basing his refusal upon his constitutional rights, including the privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States. As a result thereof and by reason of the acts of and pursuant to the agreement of the defendants, as hereinabove alleged, plaintiff Michael Wilson ever since September 20, 1951, has been and he now is refused and is excluded from employment in said industry. Therefore, said plaintiff will henceforth continue to find it impossible to obtain employment in the profession to which [fol. 74] he has devoted a major part of his entire life and energy, unless the injunctive relief hereinafter prayed for is granted.

VII

Plaintiffs allege that it was and is their belief, and it is a fact that it is the purpose of the agreement hereinabove described to limit, control and direct the political activities of their employees and to coerce and influence said employees through and by means of threat of discharge and loss of employment to refrain from adopting or following any course or line of political action and activity not acceptable to the said Committee, to limit employment in the motion picture industry to those persons whose political beliefs are acceptable to the said Committee and to limit the production of motion pictures by said industry to those the content of which is acceptable to the said Committee.

VIII

By reason of the agreement of defendants, as aforesaid, plaintiff Michael Wilson has suffered and will continue to suffer damages as follows:

(a) For loss of opportunity of employment in the motion picture industry and deprivation of artistic and intellectual gratification flowing therefrom and the resulting serious humiliation and anguish in the sum of $1,000,000.00.

(b) Said plaintiff has been required to and will in the future be required to make known the reasons for his inability to obtain employment in the motion picture industry [fol. 75] thus jeopardizing his opportunities to obtain and retain employment in other industries in the future to his damage in the sum of $250,000.00.

(c) Defendants in doing the acts hereinabove alleged have acted maliciously, oppressively, wilfully, fraudulently and wantonly, and by reason thereof defendants should be required to pay plaintiff Michael Wilson punitive damages in the sum of $1,000,000.00.

IX

The full measure of damages suffered by plaintiffs by reason of the conduct of defendants hereinabove set forth are not readily ascertainable and such damages cannot be

measured in terms of money damages alone; defendants by their conduct, as aforesaid, threaten great and irreparable damage to all of the plaintiffs and to all employees of the motion picture industry and persons seeking employment therein similarly situated; such conduct of defendants will lead to a multiplicity of suits unless restrained and enjoined by this Court; defendants threaten to and will, unless restrained by this Court, continue to commit the acts hereinabove alleged, and plaintiffs and each of them are without any plain, speedy or adequate remedy at law.

(Clerk's Note. Inserted Pursuant to Stipulation of Counsel)

"The second to eighteenth causes of action, inclusive, and the twenty-third cause of action in said first amended complaint are identical with the first cause of action except for the name of the plaintiff in each cause of action, his or her number of years of experience and his or her profession, and the date of the appearance of each plaintiff before the House Committee on Un-American Activities, all as more specifically set forth with respect to the original complaint herein."

[fol. 99]

(Clerk's Note. Inserted Pursuant to Stipulation of Counsel)

"The 20th, 21st and 22nd causes of action in said first amended complaint are identical with the 19th cause of action except for the name of the plaintiff in each cause of action, his or her number of years of experience and his or her profession, and the date of the appearance of each plaintiff before the House Committee on Un-American Activities, all as more specifically set forth with respect to the original complaint herein."

[fol. 100]

III

During the month of November, 1951, plaintiff Guy Endore was named as a Communist by a witness appearing before the said Committee on Un-American Activities. At all times plaintiff has failed and refused to appear before the said committee to answer questions concerning his political affiliations, beliefs and associations, basing his refusal upon his constitutional rights, including the privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States. As a result thereof and by reason of the acts of and pursuant to the agreement of the defendants, as hereinabove alleged, plaintiff Guy Endore ever since November, 1951, has been and he now is refused and is excluded from employment in the motion picture industry by these defendants and all other employers in said industry. Therefore, said plaintiff will henceforth continue to find it impossible to obtain employment in the profession to which he has devoted a major part of his entire life and energy, unless the injunctive relief hereinafter prayed for is granted.

IV

By reason of the agreement of defendants as aforesaid, plaintiff Guy Endore has suffered and will continue to suffer damages as follows:

(a) For loss of opportunity of employment in the motion picture industry and deprivation of artistic and intellectual gratification flowing therefrom and the resulting humiliation and anguish, to his damage in the sum of $1,000,000.00.

(b) Said plaintiff has been required to make known the reasons for his inability to obtain employment in the motion picture industry thus jeopardizing his opportunity to obtain and retain employment in other industries in the future to his damage in the sum of $250,000.00.

(c) Defendants in doing the acts hereinabove alleged have acted maliciously, oppressively, wilfully, fraudulently and wantonly and by reason thereof defendants should be

required to pay plaintiff Guy Endore punitive damages [fol. 101] in the sum of $1,000,000.00.

. . . . . .

[fol. 106]

. . . . . .

WHEREFORE, plaintiffs and each of them pray judgment against the defendants and each of them as follows:

1. For money damages in the amount of:

(a) $2,250,000.00 on the first cause of action;
(b) $2,250,000.00 on the second cause of action;
(c) $2,250,000.00 on the third cause of action;
(d) $2,250,000.00 on the fourth cause of action;
(e) $2,250,000.00 on the fifth cause of action;
(f) $2,250,000.00 on the sixth cause of action;
(g) $2,250,000.00 on the seventh cause of action;
(h) $2,250,000.00 on the eighth cause of action;
(i) $2,250,000.00 on the ninth cause of action;
[fol. 107] (j) $2,250,000.00 on the tenth cause of action;
(k) $2,250,000.00 on the eleventh cause of action;
(l) $2,250,000.00 on the twelfth cause of action;
(m) $2,250,000.00 on the thirteenth cause of action;
(n) $2,250,000.00 on the fourteenth cause of action;
(o) $2,250,000.00 on the fifteenth cause of action;
(p) $2,250,000.00 on the sixteenth cause of action;
(q) $2,250,000.00 on the seventeenth cause of action;
(r) $2,250,000.00 on the eighteenth cause of action;
(s) $2,250,000.00 on the nineteenth cause of action;
(t) $2,250,000.00 on the twentieth cause of action;
(u) $2,250,000.00 on the twenty-first cause of action;
(v) $2,250,000.00 on the twenty-second cause of action;
(w) $2,250,000.00 on the twenty-third cause of action.

2. For a permanent injunction perpetually restraining and enjoining the defendants herein, and each of them, their agents, servants or representatives, directly or indirectly by any means, method or device whatsoever (a) from maintaining any blacklist or policy of blacklisting or discriminating against the plaintiffs or any of them or

others similarly situated with respect to employment in the motion picture industry; (b) from making, adopting or enforcing any rule, regulation or policy forbidding or preventing the plaintiffs and others similarly situated from claiming and relying upon their constitutional rights and privileges before the House Committee on Un-American Activities or before any other investigating committee, tribunal or other body; (c) from controlling or directing or attempting to control or direct the political activities of the plaintiffs or any of the employees of the motion picture producer defendants in any manner whatsoever; (d) from maintaining or enforcing in any way or for any purpose the combination and conspiracy referred to in the complaint herein for the purpose of or with the effect of discriminating in employment against the plaintiffs or any other persons.

3. For an order directing defendants herein to show [fol. 108] cause at a time and place designated in said order why they and each of them should not be enjoined and restrained during the pendency of this action from doing any of the things or acts set forth in paragraph 2 of this prayer.

4. For costs of suit herein.

5. For such other and further relief as the Court may deem just and equitable in the premises.

Kenny and Morris, By Robert W. Kenny.
Margolis, McTernan and Branton, By Ben Margolis.
Thomas G. Neusom.
William B. Esterman, Attorneys for Plaintiffs.

[fol. 110] In the Superior Court of the State of California in and for the County of Los Angeles

[Title omitted]

Demurrer to Amended Complaint

Come now the defendants Loew's Incorporated, Paramount Pictures, Inc., Columbia Pictures Corporation, R.K.O. Radio Pictures, Inc., Warner Brothers Pictures,

Inc., Republic Productions, Inc., Hal E. Roach Studios, Inc., T.C.F. Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.), Universal Pictures Company, Inc. (sued herein as Universal Pictures Company), Warner Bros. Pictures Distributing Corp., United States Pictures, Inc., Sol Lesser Productions, Inc., Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.), E. B. Mannix, Dore Schary, Harry M. Warner and Jack Warner, and each for itself or himself, as the case may be, and not for any other of the defendants, demurs as hereinafter set out to the complaint herein and separately to each of the causes of action thereof upon each of the following grounds:

I

That said complaint does not state facts sufficient to constitute a cause of action against the demurring defendant.

[fol. 111] First Cause of Action
(Wilson, Page 2 of complaint)

II

That the first cause of action of said complaint does not state facts sufficient to constitute a cause of action against the demurring defendant.

(Clerk's Note. Inserted Pursuant to Stipulation of Counsel)

"The foregoing demurrer is identical with respect to each of the 23 causes of action in the first amended complaint."

[fol. 135]

* * * * * * *

Wherefore, each of the demurring defendants prays that plaintiffs take nothing by their complaint and that such defendant have judgment for his costs incurred herein.

Irving M. Walker, Herman F. Selvin, By Irving M. Walker, Attorneys for defendant Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.).

Loeb and Loeb, By Irving M. Walker, Attorneys for defendants Loew's Incorporated, Republic Productions, Inc., E. B. Mannix and Dore Schary.

O'Melveny & Myers, By Irving M. Walker, Attorneys for defendant Paramount Pictures, Inc.

Mitchell, Silberberg & Knupp, By Irving M. Walker, Attorneys for defendants Columbia Pictures Corporation, R.K.O. Radio Pictures, Inc., Sol Lesser Productions, Inc. and Hal E. Roach Studios, Inc.

Freston & Files, By Irving M. Walker, Attorneys for defendants Warner Brothers Pictures, Inc., Warner Bros. Pictures Distributing Corp., Harry M. Warner and Jack Warner.

[fol. 136] Wright, Peeler & Garrett, By Irving M. Walker, Attorneys for defendant T.C.F. Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.).

Joseph S. Dubin, By Irving M. Walker, Attorney for defendant Universal Pictures Company, Inc. (sued herein as Universal Pictures Company).

Oliver B. Schwab, By Irving M. Walker, Attorney for defendant United States Pictures, Inc.

I hereby certify that I am attorney for one of the defendants herein; that this demurrer is made in good faith and in my opinion is well taken.

Irving M. Walker

N.B. A Notice of Motions to Strike, specifying November 18, 1953 for hearing, is being filed concurrently with this Demurrer.

[fol. 139] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

No. 610 835

MICHAEL WILSON, et al., Plaintiffs,

v.

LOEW'S INCORPORATED, et al., Defendants.

MEMORANDUM RULINGS—July 9, 1954

This cause requires consideration of an alleged agreement not to employ plaintiffs in the motion picture industry, an alleged inducement of that agreement, the nature of the privilege to refuse to answer questions on the ground of self-incrimination and alleged refusals, on that ground, to appear before a congressional committee.

The amended complaint principally differs from the original, to which demurrers were sustained, in that the words "conspiracy" and "blacklisting" have been eliminated and the word "maliciously" has been added. Forty-one of the forty-four pages are the same mimeographed pages with here and there the above words penciled out.

In considering the several questions it will be convenient to divide the plaintiffs into two classes, those, eighteen in number, who appeared before the committee on un-American activities of the United States House of Representatives and refused to answer "certain questions" as to their activities and affiliations on the ground that the answers [fol. 140] would tend to incriminate themselves and those, five in number, as to whom it is alleged they had been named as communists by previous witnesses and refused to appear before the committee upon the ground of self-incrimination. Likewise, it will be convenient to consider the defendants in two groups, those who are alleged to be motion picture producers and distributors and the three,

two of whom are members of and the third an investigator for the congressional committee.

The plaintiffs have not alleged the existence of any contract with any defendant or third person or attempted any conventional allegations of restraint of trade. The cause of action attempted on behalf of each plaintiff has been based upon an agreement, and the inducement thereof, to refuse employment in the motion picture industry to all persons who: (1) are subpoenaed as witnesses before said un-American activities committee and refuse to answer questions as to their affiliations, associations and beliefs upon the ground that their answers would incriminate themselves, or (2) are so subpoenaed and fail or refuse to appear.

The first question which will be considered is whether the amended complaint states facts sufficient to constitute a cause of action for damages or an injunction against the larger class of defendants, those who are alleged to be motion picture producers and distributors.

The gist of the causes of action attempted against these defendants is not found in any California statute or judicial decision. Its genesis would appear to be section 765 of the Restatement of Torts: "(1) Persons who cause harm to another by a concerted refusal in their business to enter into or to continue business relations with him are liable for that harm, even though they would not be liable for similar conduct without concert, if their concerted refusal is not justified under the circumstances."

The above section, apparently, has not been referred to [fol. 141] in any judicial decision in this or any other state although there are decisions which approach the field.

Consideration has led to the acceptance of the proposed rule although there are cogent arguments which might be presented against its acceptance.

The tort described in the section does not consist alone of the agreement not to enter into business relations, the proposed rule is that liability exists "if their concerted refusal is not justified under the circumstances." Lack of justification is a part of the tort, not merely a matter of defense. This conclusion rests upon three separate premises: (1) The statement of the rule itself, (2) the fact that

it is an exception to the broader rule of non-liability stated in section 762 of the restatement and (3) by analogy to the holding in *Speegle* v. *Board of Fire Underwriters,* 29 Cal. (2) 34.

In the Speegle case, decided on demurrer, the alleged tort was of greater degree, interference with existing contractual relationships, but the following language (pp. 40-41) is pertinent: "Collective bargaining . . . is carried on in recognition of the fact that employers as well as employees may organize for the purpose of furthering their common interests and that such organizations may bring pressure upon their members to include in their contracts certain terms and conditions or to terminate contracts that do not contain such terms and conditions. . . . Defendants' activities would be for an unlawful purpose, however, and would not be justified, if their objective was to stifle competition by enforcing a scheme to restrain trade (Rest. Torts, sec. 768 (c).) The answer to the question whether defendants are liable for interference with plaintiff's contractual relations therefore depends upon whether plaintiff has stated a good cause of action against defendants for injury to his business by activities in restraint of trade. Has plaintiff properly raised in his pleadings the question [fol. 142] of defendants' liability for restraint of trade?"

In the present case the question is, have plaintiffs properly raised in their pleadings the question of defendants' liability for a concerted refusal without justification under the circumstances?

The answer requires a consideration of the privilege to refuse self-incrimination, the scope of the fifth amendment to the Constitution and the privilege as embodied in the California constitution and laws.

The history of the privilege to refuse to answer a question on the ground that the answer would tend to incriminate the witness has been set forth in *Twining* v. *New Jersey,* 211 U.S. 78; 53 L. Ed. 97 and in greater detail in Wigmore on Evidence, section 2251. Briefly, it may be stated that it was unknown at the time of Magna Carta; it was not mentioned in the Petition of Rights (1629), the Bill of Rights (1689), by our Continental Congress or in the original draft of the Constitution. It developed as a

rule of evidence in the English law courts during a period of their conflict with the ecclesiastical courts, wherein the privilege was unknown. It is not improbable that its origin was influenced by those jurisdictional rivalries, for it was not an age marked by concern for those charged with crime or called as witnesses. (Later writers base it upon the morality of the judicial process.) The English bankruptcy courts have not granted it to a bankrupt even if criminal charges were pending against him. It is peculiar to the British Isles and those countries which have taken the common law thence. It was incorporated in some early American state constitutions and into the fifth amendment to the Constitution on the insistance of only four of the original thirteen states.

Exemption from self-incrimination is not a part of due process of law or a privilege or immunity of national citizenship. In the leading case of *Twining v. New Jersey*, supra, it was held: "Even if the historical meaning of due process and the decisions of this court did not exclude it, it would be going far to rate it as an immutable possession of every citizen of a free government. . . . The wisdom of [fol. 143] the exemption has never been universally assented to since the days of Bentham, many doubt it today and it is best defended not as an unchangeable principle of universal justice, but as a law proved by experience to be expedient."

As recently as *Adamson* v. *California*, 332 U.S. 46, 91 L. Ed. 1903, it was held (p. 53):

> "We reaffirm the conclusion of the Twining and Palko cases that protection against self-incrimination is not a privilege or immunity of national citizenship." (cf. *Louisiana* v. *Resweber*, 329 U.S. 459; *Brock* v. *North Carolina*, 344 U.S. 324.)

It has frequently been contended, in the above and other cases, that some state action or authorized procedure impaired the protection against self-incrimination afforded by the fifth amendment to the Constitution. The Supreme Court of the United States has consistently held that said fifth amendment is "restrictive only of national action." It has held that the states are free to grant or withhold the

privilege against self-incrimination (cf. concurring opinion of Mr. Justice Frankfurter in *Louisiana* v. *Resweber*, supra), that they might adopt the civil law (*HOlden* v. *Harby*, 169 U.S. 387; *Maxwell* v. *Dow*, 176 U.S. 581) wherein self-incrimination is compelled (*Twining* v. *New Jersey*, supra).

It is necessary therefore to turn to the law of California to measure the right asserted by the plaintiffs herein, for the fifth amendment extended no farther than to prevent the congressional committee from compelling plaintiffs to answer questions if the answers tended to incriminate plaintiffs. It is necessary to turn to the law of California to evaluate plaintiffs' rights for another reason. Plaintiffs contend that the alleged agreement among these defendants prevents plaintiffs from p rsuing their several callings in the motion picture industry. Ever since the Slaughterhouse [fol. 144] cases (16 Wall. 36; 21 L. Ed. 394) it has been held that the right to engage in a trade, business or calling is not a privilege or immunity of national citizenship, but of state citizenship (*Twining* v. *New Jersey*, supra).

The privilege afforded by California relative to self-incrimination is to be found in the following words of section thirteen of article one of our constitution: "No person shall . . . be compelled, in any criminal case, to be a witness against himself; but in any criminal case, whether the defendant testifies or not, his failure to explain or deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the court or the jury . . ."

The first portion of the above quotation antedates 1934, at which time the second portion was adopted. Prior to 1934 it had been settled that the words "in any criminal case" were not limited to their ordinary meaning, but also included civil actions, grand jury and legislative committee hearings. The use of identical words in the 1934 amendment must be given the same interpretation. The privilege granted and its burden are coextensive.

In a California criminal prosecution the defendant's failure to deny or explain by his testimony evidence or facts against him leads to the result "that among the inferences that may reasonably be drawn therefrom, those un-

favorable to the defendant are the more probable" (*People* v. *Adamson*, 27 Cal. (2) 478; aff. 332 U.S. 46).

No reason occurs why comment and consideration by counsel, court and jury should be permissible in the forum of criminal prosecutions, but a concert of conduct in the forum of business enjoined. If the court or jury may draw unfavorable inferences in a criminal prosecution, no reason occurs why those who merely are possible employers should be required to respond in damages for conduct to protect their business interests from the result of such [fol. 145] inferences being drawn by their customers.

The authors of section 765 themselves state in their discussion of section 762 the necessity that each business enterprise must be free to select its own relations in its own interests, a part of the liberty of every person to acquire property, engage in business and select which business transactions he shall enter. Section 765 they propose as an exception to the rule of non-liability, as a limitation upon the foregoing freedom, in so far as the concert of refusal affects the economic welfare.

The economic welfare does not require enjoining possible employers from agreeing among themselves that they will not employ persons who refuse to answer questions as to their activities, affiliations and associations in the course of investigations relative to communistic activities in this country. Nor was the privilege against self-incrimination originated or continued for the protection of the economic interests of those who exercise it. No witness may refuse to answer a question because it will affect his economic interests adversely. The exemption is available only if the answer will tend to show conduct for which the witness may be prosecuted and convicted (cf. Ex parte Cohn, 104 Cal. 524).

Another standard of evaluation in determining whether the agreement alleged to have been made by defendants was not justified under the circumstances is to be found in previous rulings in this court that complaints for the termination of school teachers who similarly refused to answer questions, notwithstanding school district rules requiring answers and authorizing termination proceedings

for refusals, stated facts sufficient to constitute causes of action.

Further, it should be noted that section 1028.1 of the Government Code makes it the duty of every public employee to appear before any committee or sub-committee of the Congress or state legislature in this field and answer [fol. 146] questions. The section further provides: "Any public employee who fails or refuses to appear or to answer under oath on any ground whatsoever any questions so propounded . . . shall be suspended and dismissed from his employment in the manner provided by law." The section appears to be a valid legislative enactment.*

Plaintiffs are not concerned with possible employment in the public service, but it would be an anomalous result if public employees were discharged for certain conduct and those not in public service could enjoin or recover damages from non-employers because the latter mutually agreed to refrain from employing persons who so acted. It would be strange law which found service of the public interest in the former instance, but an anathema in the latter merely because of the concert of action.

The foregoing considerations point toward a ruling that, as a matter of law, the agreement alleged was justified under the circumstances, but it is not necessary to go that far. It is necessary, as stated at the outset, that plaintiffs plead facts sufficient to show that the concert of agreement was not justified under the circumstances.

Plaintiffs have recognized that necessity for in the complaint and amended complaint they have alleged purposes behind the said agreement. Paragraph seven of the amended complaint contains those allegations. The purposes alleged were to limit, control and direct plaintiffs' political activities, to coerce and influence them to refrain from adopting or following any course or line of political action or activity not acceptable to the committee on un-American activities, to limit employment of persons to those whose

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*Since the preparation of the foregoing opinion, it has been reported that the District Court of Appeal, Third District, has upheld the constitutionality of section 1028.1, Government Code, (Steinmetz v. ————) but the opinion, if written, is not at hand.

political beliefs are acceptable to said committee and the content of motion pictures to that which is acceptable to said committee. These allegations appear more inciting than substantial, more of a cliché than factual, and while considerable liberality should be allowed the pleader in [fol. 147] stating facts by way of lack of justification "under the circumstances", it does not follow that any statement will suffice because it has been made. If the goal alleged cannot result, the allegation of purpose will not suffice.

The amended complaint alleged that defendants agreed to exclude from employment: (1) communists, (2) those who refused to appear and (3) those who declined to answer questions as to their activities, affiliations, associations and beliefs. These plaintiffs have not alleged that they are communists, they have alleged they appeared, hence the only allegations as to the agreement affecting them is the failure to answer. Merely giving answers as to activities, affiliations, associations or beliefs, past or then current, would not have limited, controlled or directed their political activities. Whatever their past conduct or beliefs, these could not be changed, limited, controlled or directed retroactively. Whatever their then current activities, associations or affiliations these could not then have been changed or directed by anyone except plaintiffs. Their activities could have been controlled and limited only if criminal and the law actually seeks to control and limit criminal activity, political or non-political. The allegations as to beliefs and influencing may be dropped from consideration. The holding of a belief cannot be externally controlled, directed or limited and could not in itself constitute a crime. Belief held, without overt acts, might be immaterial in an inquiry but it would not be within the privilege against self-incrimination. As to influencing plaintiffs' political activities, affiliations and associations the law does not look askance at such efforts and the concerted actions of political parties, clubs and candidates are devoted to that end.

How employment in the industry would be limited to those acceptable to the committee if plaintiffs had answered does not appear. To the attainment of that result we should

have to presume further terms into the agreement alleged and read into the amended complaint facts which have not been alleged.

[fol. 148] The alleged purpose of limiting the content of motion pictures to matter acceptable to the committee cannot stand up under scrutiny. The amended complaint alleges these defendants controlled the industry, presumably plaintiffs did not, therefore the content of pictures would appear to have been determined by defendants prior, during and subsequent to the committee hearings and could not have been affected if plaintiffs had answered. Further, motion pictures are a product of private industry and the law is not concerned with whether the producers thereof desire to exclude content which is not acceptable to some race, creed or committee.

The amended complaint, as did the original, fails to allege unjustness under the circumstances.

When we turn to the second group of plaintiffs (counts 16, 19, 20, 21 and 22) we find certain additional allegations and the absence of one. The added allegations are that the particular plaintiff in each count had been named as a communist by previous witnesses before the committee and had refused to appear before the committee. The allegation missing is that the plaintiff had been subpoenaed to appear. In other words, each of the eighteen counts on behalf of plaintiffs who appeared alleges that the particular plaintiff was subpoenaed although the appearance renders the allegation surplusage, but these five counts are silent as to subpoenas. It is not unreasonable to assume that any absence of or defects in subpoenas would have been alleged in the amended complaint, if not the original. If plaintiffs had not been subpoenaed, they could not state causes of action founded on the agreement, for it, as alleged, applies only to persons who appear or are subpoenaed and fail to appear.

The refusal or failure to appear is not an exercise of the privilege against self-incrimination, for that exemption has never given the witness the right to elect between [fol. 149] appearance or non-appearance. The conduct of these defendants was not authorized by the fifth amendment to the Constitution or the laws of California.

The rule proposed in section 765 of the restatement rests upon an assumed economic value, namely, that while individuals may refuse to have business relations there may be instances in which a concert of refusal will not be tolerated because of the greater force and economic power of the concert of action. Mere concert of action is not condemned, because the law recognizes and upholds concerted effort in collective bargaining and other relationships.

No reason appears why refusals to appear before courts or legislative committees should be encouraged. No reason appears why the economic welfare requires that notwithstanding contemptuous conduct toward a summons from a governmental agency the concert of action of exclusion is a thing which must be enjoined or penalized by an award of damages. The prospect of contempt proceedings, not an award of damages or an injunction must remain the wages of such conduct.

As to each of these five plaintiffs the amended complaint alleges: "plaintiff . . . was named as a Communist by a witness appearing before the said Committee on Un-American Activities. . : . " The defendants herein and the public would be entitled to draw from the refusal to deny or explain this evidence, inferences which were unfavorable. It would be unrealistic to say that the defendant employers who are dependent upon the public for the continuance of their businesses would not be "justified under the circumstances" in making an agreement not to employ this group of plaintiffs. Their economic interest is self-evident and not to be gainsaid by academic discussions.

This brings us to the second group of defendants, three in number, two of whom are members of the congressional committee and one an investigator for the committee.

[fol. 150] Because the amended complaint is merely forty-one mimeographed pages found in the original with certain words pencilled out and three partially new pages, it actually alleges that these defendants entered into an agreement not to employ plaintiffs, allegations which plaintiffs probably did not intend. It is more probable that plaintiffs desire to stand on the allegations that these defendants induced the others to make the agreement.

No demurrer for failure to separately state causes of action was filed by these defendants only a general demurrer to the entire amended complaint.

The court must take cognizance of the probability of an absence of any economic interest in these defendants and consider the allegations to be of a purposeful interference by strangers with the possibility of business relationships.

Purposely causing another not to enter into business relationships with a third person has been recognized as a possible tort from very early times and in many varied situations. Such a tort was recognized as early as the year 1410 and the common law developed a special writ in the field before the end of that century.

The earliest decisions were in cases which involved some violence, threat thereof, fraud or defamation, but the general doctrine has been broadened time and again to situations which do not contain these elements. Within the general field are trademark and trade name infringements, fraudulent misrepresentations, defamation of business and disparagement of goods.

Essential elements are the nature of the acts which constitute the inducement, for not every inducement rest upon tortious conduct; knowledge upon the part of the actor, for an inducement may be without knowledge and not tortious and the relationship of the parties, because that may authorize the conduct of the defendant. In other [fol. 151] words, merely alleging that the defendants "induced" others not to enter into business relationships with the plaintiffs does not allege (1) tortious conduct, or (2) any act on the part of the defendants charged. Such allegation is a legal conclusion of the pleader. It gives the result of action, but fails to allege what was done. It is as descriptive of acts for which no liability attaches as it is of tortious conduct. The facts from which the pleader concludes that the defendant induced the refusal to enter into business relations may or may not warrant the recovery of damages. It may have been completed leaving nothing to enjoin or it may be continuing. The situation cannot be determined either way as a matter of law and plaintiffs should be given another opportunity to amend.

The twenty-three general demurrers (one to each count of the amended complaint) of each of the following defendants, Loew's Incorporated, Paramount Pictures, Inc., Columbia Pictures Corporation, R.K.O. Radio Pictures, Inc., Warner Brothers Pictures, Inc., Republic Productions, Inc., Hal E. Roach Studios, Inc., T.C.F. Film Corporation, Universal Pictures Company, Inc., Warner Bros. Pictures Distributing Corporation, United States Pictures, Inc., Sol Lesser Productions, Inc., Association of Motion Picture Producers, Inc., E. B. Mannix, Dore Schary, Harry M. Warner and Jack Warner are sustained without leave to amend.

The general demurrers of the defendants Donald L. Jackson, Clyde Doyle and William Wheeler to the amended complaint are sustained with thirty days to amend.

Dated: July 9, 1954.

Ellsworth Meyer, Judge.

[fol. 152] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 610835

MICHAEL WILSON, *et al.*, Plaintiffs,

v.

LOEW'S INCORPORATED, a corporation, et al., Defendants.

JUDGMENT OF DISMISSAL AS TO CERTAIN DEFENDANTS—August 2, 1954

This matter came on regularly to be heard in Department 25 of the above-entitled court on December 29, 1953, upon the demurrers to the amended complaint of defendants Loew's Incorporated, Paramount Pictures, Inc., Columbia Pictures Corporation, R.K.O. Radio Pictures, Inc., Warner Brothers Pictures, Inc., Republic Productions, Inc., Hal E.

Roach Studios, Inc., T. C. F. Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.), Universal Pictures Company, Inc. (sued herein as Universal Pictures Company), Warner Bros. Pictures Distributing Corp., United States Pictures, Inc., Sol Lesser Productions, Inc., Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.), E. B. Mannix, Dore Schary, Harry M. Warner and Jack Warner. Each of the plaintiffs and each of said demurring defendants duly and regularly appeared [fol. 153] by their respective attorneys of record and argued said cause. The Court having taken said matter under submission and having duly considered the same and having made its order herein sustaining said demurrers and each of them without leave to the plaintiffs or any of them to amend, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the within cause be and it hereby is dismissed as to said demurring defendants and each of them and that said defendants and each of them have their costs incurred herein, which said costs are hereby taxed at the sum of $41.00.

Dated: August 2, 1954.

Ellsworth Meyer, Judge.

[fol. 154] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

[Title omitted]

NOTICE OF APPEAL—Filed September 7, 1954

To the Defendants, Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.) and to Irving M. Walker and Herman F. Selvin, their attorneys; Loew's Incorporated, Republic Productions, Inc., E. B. Mannix and Dore Schary, and to Loeb and Loeb, their attorneys; Paramount Pictures, Inc., and to O'Melveny & Myers, its attorneys; Columbia Pictures Corporation, RKO Radio Pictures,

Inc., Sol Lesser Productions, Inc. and Hal E. Roach Studios, Inc., and to Mitchell, Silberberg & Knupp, their attorneys; Warner Brothers Pictures, Inc., Warner Bros. Pictures Distributing Corp., Harry M. Warner and Jack Warner and to Freston & Files, their attorneys; T.C.F. Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.) and to Wright, Peeler & Garrett, its attorneys; Universal Pictures Company, Inc. (sued herein as Universal Pictures Company) and to Joseph S. Dubin, its attorneys, United States Pictures, Inc., and to Oliver B. Schwab, its attor-[fol. 155] neys, Honorable Ellsworth Meyer, Judge of the above entitled Court and to the Clerk of the above entitled Court, to the District Court of Appeal of the State of California, Second Appellate District and to the Clerk of said Court:

PLEASE TAKE NOTICE that the plaintiffs herein hereby appeal to the District Court of Appeal of the State of California, Second Appellate District, from the judgment and the whole thereof entered August 5, 1954, in the office of the County Clerk of the County of Los Angeles in Book 2764 of Judgments, page 168, of the records of the above entitled Court.

Dated: September 7, 1954.

Kenny and Morris, Margolis, McTernan and Branton, Thomas E. Newsom, William B. Esterman, By Robert W. Kenny, Attorneys for Plaintiffs and Appellants.

[fol. 156] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

[Title omitted]

REQUEST FOR CLERK'S TRANSCRIPT PURSUANT TO RULE 5, RULES ON APPEAL—Filed September 7, 1954

To the Clerk of the Above Entitled Court:

Please prepare a Clerk's Transcript for appeal from the judgment heretofore rendered in the above entitled action

and entered on August 6, 1954, which transcript shall include the following:

1. First Amended Complaint.

2. Demurrer of the defendants Loew's Incorporated, Paramount Pictures, Inc., Columbia Pictures Corporation, R.K.O. Radio Pictures, Inc., Warner Brothers Pictures, Inc., Republic Productions, Inc., Hal E. Roach Studios, Inc., T.C.F. Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.) Universal Pictures Company, Inc. (sued herein as Universal Pictures Company), Warner Bros. Pictures Distributing Corp., United States Pictures, Inc., Sol Lesser Productions, Inc., Association of Motion [fol. 157] Picture Producers, Inc. (sued herein as 1 Doe Co.), E. B. Mannix, Dore Schary, Harry M. Warner and Jack Warner, to first amended complaint.

3. Memorandum ruling of the Court dated July 15, 1954.

4. Judgment of dismissal as to the above named defendants entered August 5, 1954, at Book 2764 of Judgments, p. 168.

5. Notice of Appeal from said Judgment of August 5, 1954.

6. This request for Clerk's Transcript.

Dated: September 7, 1954.

Kenny and Morris, Margolis, McTernan & Branton, Thomas E. Neusom, William B. Esterman, By Robert W. Kenny, Attorneys for Plaintiffs and Appellants.

[fol. 158] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

[Title omitted]

RESPONDENTS' DESIGNATION OF MATTERS TO BE INCLUDED IN CLERK'S TRANSCRIPT PURSUANT TO RULE 5(b) RULES ON APPEAL—Filed September 17, 1954

To the Clerk of the Above-Entitled Court:

Please include in the Clerk's Transcript heretofore requested to be prepared by the appellants herein, the following papers:

1. The original complaint filed herein (an original and carbon copy of which are furnished you herewith).

2. Minute order of the court dated October 5, 1953, sustaining demurrers to the original complaint on file herein.

3. This request.

[fol. 159] Dated: September 9, 1954.

Irving M. Walker, Herman F. Selvin, By Herman F. Selvin, Attorneys for respondents Association of Motion Picture Producers, Inc. (sued herein as 1 Doe Co.); Loew's Incorporated, Republic Productions, Inc., E. B. Mannix, Dore Schary, Columbia Pictures Corporation, RKO Radio Pictures, Inc., Sol Lesser Productions, Inc., Hal E. Roach Studios, Inc., Warner Brothers Pictures, Inc., Warner Bros. Pictures Distributing Corp., Harry M. Warner, Jack Warner, T.C.F. Film Corporation (sued herein as Twentieth Century-Fox Film, Inc.), Universal Pictures Company, Inc. (sued herein as Universal Pictures Company), United States Pictures, Inc. and Paramount Pictures, Inc.

[fol. 160] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT
(Omitted in printing)

[fol. 161] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

[Title omitted]

DEMURRER OF DEFENDANTS CLYDE DOYLE AND DONALD L. JACKSON TO FIRST AMENDED COMPLAINT—Filed December 15, 1953

Come now defendants Clyde Doyle and Donald L. Jackson, appearing for themselves alone, and demur to the first amended complaint herein on the ground:

That the first amended complaint does not, nor does any of the causes of action therein, state facts sufficient to constitute a cause of action against these defendants or either of them.

WHEREFORE, these defendants pray that plaintiffs take nothing by their action and that they be dismissed hence with their costs.

Dated: December 14, 1953.

Guy Richards Crump, Slate & Sawtelle, By Guy Richards Crump, Attorneys for defendants Clyde Doyle and Donald L. Jackson.

This Demurrer will be filed December 15, 1953, for hear-
[fol. 162] ing with Demurrers and Motions of other defendants on December 22, 1953.

(Points and Authorities on file but omitted herefrom.)

[File endorsement omitted]

[fol. 163] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

DEMURRER OF DEFENDANT WILLIAM WHEELER TO FIRST AMENDED COMPLAINT—Filed December 15, 1953

Comes now defendant William Wheeler, appearing for himself alone, and demurs to the first amended complaint herein on the ground:

That the first amended complaint does not, nor any of the causes of action therein, state facts sufficient to constitute a cause of action against this defendant.

WHEREFORE, this defendant prays that plaintiffs take nothing by their action and that he be dismissed hence with his costs.

Dated: December 14, 1953.

Guy Richards Crump, Slate & Sawtelle, By Guy Richards Crump, Attorneys for defendant William Wheeler.

This Demurrer will be filed December 15, 1953, for hearing with Demurrers and Motions of other defendants on December 22, 1953.

(Points and Authorities on file, but omitted herefrom.)

[fol. 164] [File endorsement omitted]

[fol. 164a] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 610835

MICHAEL WILSON, *et al.*, Plaintiffs,

v.

LOEW'S INCORPORATED, *et al.*, Defendants.

JUDGMENT FOR DEFENDANTS CLYDE DOYLE, DONALD L. JACKSON AND WILLIAM WHEELER AFTER ORDER SUSTAINING DEMURRERS AND FAILURE OF PLAINTIFFS TO AMEND—September 14, 1954

In this action defendants Clyde Doyle, Donald L. Jackson and William Wheeler, by their attorneys Guy Richards Crump and Slate & Sawtelle having appeared and demurred to plaintiffs' amended complaint herein, within the time allowed by the Court, and the issue of law raised by said demurrers having been argued and submitted to the Court, and the Court, being fully advised in the premises, having on the 9th day of July, 1954, sustained said demurrers and granted plaintiffs 30 days from July 9, 1954, within which

to file a second amended complaint and no second amended complaint having been filed, and said defendants through their said attorneys having moved this Court for judgment of dismissal pursuant to Section 581-3 of the Code of Civil Procedure and proof of due notice of said motion having been made and there being no objections thereto and the matter coming on regularly for hearing this 14th day of September, 1954, pursuant to said notice of motion;

[fol. 164b] NOW, THEREFORE, IT IS ADJUDGED that this action be and the same is hereby dismissed as to said defendants Clyde Doyle, Donald L. Jackson and William Wheeler.

Dated: September 14, 1954.

Ellsworth Meyer, Judge.

[fol. 165] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 610835

[Title omitted]

NOTICE OF APPEAL—Filed November 5, 1954

To the Defendants, Clyde Doyle, Donald L. Jackson and William Wheeler, and to Guy Richards Crump, Slate and Sawtelle, their attorneys and to Honorable Ellsworth Meyer, Judge of the above entitled Court and to the Clerk of the above entitled Court, to the District Court of Appeal of the State of California, Second Appellate District and to the Clerk of said Court:

PLEASE TAKE NOTICE that the plaintiffs herein hereby appeal to the District Court of Appeal of the State of California, Second Appellate District, from the judgment and the whole thereof dated September 14, 1954, and entered September 16, 1954, in the Special Minute Order Book of the above entitled Court.

Dated: November 5, 1954.

Kenny and Morris, Margolis, McTernan and Branton, Thomas E. Neusom, William B. Esterman, By Robert W. Kenny, Attorneys for Plaintiffs and Appellants.

[fol. 166] [File endorsement omitted]

[fol. 247] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

Civil Nos. 20769, 21100

MICHAEL WILSON, *et al.*, Appellants,

v.

LOEW'S INCORPORATED, a corporation *et al.*, Defendants; ASSOCIATION OF MOTION PICTURE PRODUCERS, INC., *et al.*, Respondents.

OPINION—Filed June 11, 1956

Appeals from judgments of the Superior Court of Los Angeles County. Ellsworth Meyer, Judge. Affirmed.

Kenny & Morris, Thomas G. Neuson, Margolis, McTernan & Branton and Robert W. Kenny for Appellants.

Irving M. Walker, Herman F. Selvin, Loeb & Loeb, O'Melveny & Myers, Mitchell, Silberberg & Knupp, Freston & Files, Wright, Peeler & Garrett, Joseph S. Dubin and Oliver B. Schwab for Respondents in Civ. No. 20769.

Guy Richards Crump and Slate & Sawtelle for Respondents in Civ. No. 21100.

[fol. 248] Appeals from two judgments of dismissal. The case is here on an amended complaint, referred to as the complaint. There are 23 plaintiffs and 23 counts. All of the defendants except three are motion picture producers and distributors. Two of the three remaining defendants are members of the Committee on Un-American Activities of the United States House of Representatives and the third is an investigator for that Committee. A demurrer of the motion picture producers and distributors was sustained without leave to amend and judgment of dismissal entered. One of the appeals is from that judgment. Demurrers of the three remaining defendants to the amended complaint were sustained with leave to amend. Plaintiffs declined to amend

and judgment of dismissal followed. The other appeal is from that judgment.

Each count of the complaint relates to only one plaintiff. The counts are identical except for personal data. A statement of the first count will suffice as a statement of the pleading as a whole. It alleges:

1. Plaintiff Wilson is by profession a motion picture writer; has had more than 5 years experience as a writer; has acquired a reputation for work in the motion picture industry; has won high esteem as a writer in that industry; [fol. 249] all of which defendants at all times knew.[1]

2. The corporate defendants are engaged in the production and distribution of motion pictures. The corporate and individual defendants, other than the Committee members and the investigator, control directly and indirectly all motion picture production and distribution in the United States and all motion picture employment opportunities for actors, writers, directors, producers and other employees in that industry.

3. Defendant members of the Committee on Un-American Activities and the investigator at all times and with respect to the matters alleged "acted both in their official capacity with relation to said House Committee on Un-American Activities and individually in non-official capacities."

4. Prior to March 1951 and continuously thereafter defendants, and each of them, agreed with each other to refuse employment to, and exclude from employment in the motion picture industry the following persons:

a. All employees and persons seeking employment who [fol. 250] had been or thereafter were subpoenaed as witnesses before the Committee on Un-American Activities of the House of Representatives and who refused on constitutional grounds to answer questions "concerning their political affiliations, associations and beliefs."

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[1] The allegations with respect to the other plaintiffs are identical except that those who are not writers are alleged to be actors, actresses, a story editor, a research worker, and a grip, respectively, with experience ranging from "more than 5" to "more than 25" years.

b. All employees in the industry and persons seeking employment therein who were named before the Committee as Communists or who were subpoenaed to appear as witnesses before the Committee, or who were suspected of ever having been Communists or of ever having had associations with Communists, and who refused or failed to appear before the Committee and waive and surrender their constitutional rights and testify or give statements fully disclosing "their own political affiliations, association and beliefs and those of their family, friends, associates and acquaintances."

c. Defendants, with the intent to prevent such employees and other persons from having or obtaining employment in the motion picture industry, maliciously and without justification undertook to and did induce and persuade each other and other employers in the industry to desist and refrain from employing and to refuse employment to all such employees and other persons.

[fol. 251] d. All defendants, as a part of the agreement and as one of the means of effectuating it, have published and circulated throughout the entire motion picture production and exhibition fields a list containing the names of such employees and other persons with the direction and intent that they be not employed. Plaintiff contends defendants wrongfully, maliciously, and without justification or excuse have interfered with and injured the right of said employees and other persons reasonably to expect employment in the industry and to pursue their professions and occupations therein, and have prevented their employment therein.

5. On September 20, 1951 plaintiff Wilson appeared before the Committee pursuant to subpoena. He there refused to answer certain questions "concerning his political affiliations, beliefs and associations" basing his refusal on his constitutional rights, including the privilege against self-incrimination.

6. As a result of such refusal and by reason of the acts of and pursuant to the agreement of defendants, Wilson ever since September 20, 1951 has been and he now is refused and is excluded from employment in the industry. Therefore he will henceforth continue to find it impossible

[fol. 252] to obtain employment in the profession to which he has devoted a major part of his life and energy.

7. It is plaintiff's belief that the purpose of the agreement is to limit, control, and direct the political activities of defendants' employees; to coerce and influence them through and by means of threat of discharg- and loss of employment from adopting or following any course or line of political action and activity not acceptable to the Committee; to limit employment in the industry to those persons whose political beliefs are acceptable to the Committee; and to limit the production of motion pictures by the industry to those the content of which is acceptable to the Committee.

8. Plaintiff has been damaged in the sum of $1,000,000 for loss of opportunity of employment in the industry and deprivation of artistic and intellectual gratification flowing therefrom and the resulting humiliation and anguish; in the sum of $250,000 for the jeopardizing of employment opportunities in other industries because of the necessity of disclosing the reasons for his inability to obtain employment in the industry; and in the sum of $1,000,000 as punitive damages.

The allegations in respect to the appearance of all but five of the plaintiffs before the Committee are, save for [fol. 253] dates, identical. In each instance the appearance before the Committee was after the alleged making of the agreement. As to the five who did not appear, the averments are that each was named as a Communist by a witness appearing before the Committee; that each refused to appear before the Committee to answer questions concerning his or her "political affiliations, beliefs and associations," basing such refusal on his or her constitutional rights including the privilege against self-incrimination; as a result of the acts of and pursuant to the agreement, they have been refused and excluded from employment in the industry by defendants and all other employers therein; and they will henceforth find it impossible to obtain such employment. In each instance the refusal to appear was after the making of the alleged agreement.

The prayer is for money damages of $2,250,000 on each count and for an injunction.

The amended complaint is to be implemented by the facts of which we take judicial notice. In considering a demurrer to a complaint, facts judicially noticed are deemed a part of the complaint even when the pleading contains an express allegation to the contrary.[2] We take judicial notice of the proceedings and reports of the Committee on Un-American [fol. 254] Activities.[3] The proceedings and reports of the Committee show that each of 18 of the 23 plaintiffs was asked by the Committee whether he or she was then or ever had been a member of the Communist Party. Each refused to answer, asserting his or her constitutional privilege against self-incrimination. Each of the other 5 plaintiffs was stated to be a Communist by a witness before the Committee and on the same grounds refused to appear and state whether he was then or ever had been a member of [fol. 255] the Communist Party. The refusals occurred in the course of hearings held as part of a Congressional investigation by the Committee on Un-American Activities of the House of Representatives acting within the scope of its authority into Communist infiltration of the motion picture industry,[4] for the protection of the internal security

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[2] *Chavez* v. *Times-Mirror Co.*, 185 Cal. 20, 23; *Loranger* v. *Nadeau*, 215 Cal. 362, 365; *Hammell* v. *Britton*, 19 Cal. 2d 72, 75; *Weil* v. *Barthel*, 45 Cal. 2d 835, 837.

[3] Code Civ. Proc., sec. 1875(3); *Arizona* v. *California*, 283 U.S. 425, 75 L.Ed. 1154, 51 S.Ct. 522 Footnote 4; *Greeson* v. *Imperial Irr. Dist.*, 9 Cir., 59 F. 2d 529, 531; *Louisville Gas & Electric Co.* v. *Federal Power Com'n.*, 6 Cir., 129 F. 2d 126, 134, cert. den. 318 U.S. 761, 87 L.Ed. 1133, 63 S.Ct. 559; *Overfield* v. *Pennroad Corporation*, 3 Cir., 146 F. 2d 889, 898; *Stasiukevich* v. *Nicolls*, 1 Cir., 168 F. 2d 474, 479; *Osage Nation of Indians* v. *United States*, 97 F. Supp. 381, 403, cert. den. 342 U.S. 896, 96 L.Ed. 672, 72 S.Ct. 320; *Rank* v. *Krug*, 90 F. Supp. 773, 781; *United States* v. *Aluminum Co. of America*, 1 F.R.D. 71; *Mullan* v. *State*, 114 Cal. 578, 582; *Davis* v. *Whidden*, 117 Cal. 618, 623; *French* v. *Senate of State of California*, 146 Cal. 604, 608; *Pacific Employers Ins. Co.* v. *Carpenter*, 10 Cal. App. 2d 592, 602. Cf. *Parker* v. *James Granger, Inc.*, 4 Cal. 2d 668, 677, cert. den. 298 U.S. 644, 80 L.Ed. 1375, 56 S. Ct. 943; *Arnold* v. *Universal Oil Land Co.*, 45 Cal. App. 2d 522, 529; *El Zarape etc. Factory* v. *Plant Food Corp.*, 90 Cal. App. 2d 336, 346.

[4] Act of August 2, 1946, c. 753, Title I, Pt. 2, sec. 121 (q), 60 Stat. 828; Senate Doc. No. 26, 80th Congress, 1st Session; *Dennis* v. *United States*, App. D.C., 171 F. 2d 986, 987-8, aff. 339 U.S.

of this Nation and the public disclosure of the forces that menace the United States. It thus appears, contrary to the allegations of the complaint, that the questions which the 18 plaintiffs refused to answer and that the statements which the 5 refused to appear and give had nothing whatever to do with their political affiliations, associations, or beliefs but concerned their membership in a "conspiratorial and revolutionary junta"[5] one of whose objectives is the overthrow of our government by force and violence,[6] a

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162, 94 L.Ed. 734, 70 S.Ct. 519; *Lawson* v. *United States*, App. D.C., 176 F. 2d 49, 51-2, cert. den. 339 U.S. 934, 94 L.Ed. 1352, 70 S.Ct. 663; *Barsky* v. *United States*, App. D.C., 167 F. 2d 241, 250, cert. den. 334 U.S. 843, 92 L.Ed. 1767, 68 S.Ct. 1511.

[5] Concurring opinion of Mr. Justice Jackson, *American Communications Assoc.* v. *Douds*, 339 U.S. 382, 94 L.Ed. 925, 70 S.Ct. 764.

[6] *Menace of Communism*, Senate Doc. No. 26, 80th Congress, 1st Session; *Report on the Communist Party of the United States as an Advocate of Overthrow of Government by Force and Violence*, House Report No. 1920, 80th Congress, 2d Session; House Doc. No. 251, 83d Congress, 2d Session, 100 Congressional Record 80; *Communism in Action*, House Doc. No. 754, 79th Congress, 2d Session; Labor Management Relations Act, 1947, Sec. 1 et seq., 29 U.S.C.A. Supp. sec. 159(h), *American Communications Asso.* v. *Douds*, 339 U.S. 382, 94 L.Ed. 925, 70 S.Ct. 764; Internal Security Act of 1950, sec. 1 et seq., 50 U.S.C.A. sec. 781 et seq.; Communist Control Act of 1954, Sec. 1 et seq., 50 U.S.C.A. Supp. sec. 841 et seq.; Government Code, sec. 1027.5; *National L.R. Bd.* v. *Highland Park Mfg. Co.*, 341 U.S. 322, 95 L.Ed. 969, 71 S.Ct. 758; concurring opinion of Mr. Justice Jackson in *Dennis* v. *United States*, 341 U.S. 494, 564-595, L.Ed. 1137, 1181, 71 S.Ct. 857; *Galvan* v. *Press*, 347 U.S. 522, 529, 98 L.Ed. 911, 74 S.Ct. 737; *Rosenberg* v. *United States*, 2 Cir., 195 F. 2d 583, cert. den. 344 U.S. 838, 97 L.Ed. 652, 73 S.Ct. 20; *National Maritime Union of America* v. *Herzog*, 78 F. Supp. 146, aff. 334 U.S. 854, 92 L.Ed. 1776, 68 S.Ct. 1529; *Lawson* v. *United States*, App. D.C., 176 F. 2d 49, cert. den. 339 U.S. 934, 94 L.Ed. 1352, 70 S.Ct. 663; *United States* v. *Dennis*, 2 Cir., 183 F. 2d 201, 212-3, aff. 341 U.S. 494, 95 L.Ed. 1137, 71 S.Ct. 857; *Barsky* v. *United States*, App. D.C., 167 F. 2d 241, 247, cert. den. 334 U.S. 843, 92 L.Ed. 1767, 68 S.Ct. 1511; *Daniman* v. *Board of Education*, 306 N.Y. 532, 540-1, 119 N.E. 2d 373, 379; *People* v. *Chambers*, 22 Cal. App. 2d 687, 709-13; 37 Georgetown L.J. 297. Said Judge Learned Hand in *United States* v. *Dennis*, *supra*, (183 F. 2d 212): "The American Communist Party, of which the defendants are the controlling spirits, is a highly articulated, well contrived, far spread organization, numbering

[fol. 257] malignant force which menaces the very existence of the government. It also necessarily appears, contrary to allegations of the complaint, that the purpose of the agreement was not to limit, or control, or direct the political activities of defendants' employees or to coerce them from following any course of political action or to limit employment in the industry to those persons whose political beliefs are acceptable to the Committee. Nor was the investigation into the political beliefs of anyone. The allegations of the complaint in these respects are misleading and evasive. The word "political" implies "orderly conduct of government, not revolution." (*Lockheed Aircraft Corp.* v. *Superior Court*, 28 Cal. 2d 481, 485.)

The Case Against the Motion Picture Producers and Distributors

The complaint sounds in tort. To state a cause of action facts must be alleged showing that some legally protected interest of plaintiffs has been injured. (*MacLeod* v. *Fox West Coast T. Corp.*, 10 Cal. 2d 383, 386; *Stryker* v. *Republic Pictures Corp.*, 108 Cal. App. 2d 191, 195.) The com- [fol. 258] plaint does not allege any present or existing contract or employment of any *of any* one of plaintiffs. The cause of action attempted to be alleged is obviously one for wrongful interference with future or prospective contract or business relations. In effect it is alleged the motion picture producers and distributors combined and agreed to make it a condition of employment in the motion picture industry that the person shall not have been subpoenaed as a witness before the Committee and have refused

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thousands of adherents, rigidly and ruthlessly disciplined, many of whom are infused with a passionate Utopian faith that is to redeem mankind. It has its Founder, its apostles, it- sacred texts—perhaps even its martyrs. It seeks converts far and wide by an extensive system of schooling, demanding of all an inflexible doctrinal orthodoxy. The violent capture of all existing governments is one article of the creed of that faith, which abjures the possibility of success by lawful means. That article, which is a common-place among initiates, is a part of the homiletics for novitiates, although, so far as conveniently it can be, it is covered by an innocent terminology, designed to prevent its disclosure. Our democracy, like any other, must meet that faith and that creed on the merits, or it will perish; and we must not flinch at the challenge."

on constitutional grounds to answer, not questions concerning his political affiliations, activities, or beliefs, but whether he is or ever has been a member of the Communist Party, or that the person was named before the Committee as a Communist and had refused on constitutional grounds to appear before the Committee to answer questions concerning his Communist affiliations, beliefs, and associations. The specific injury of which plaintiffs complain is the loss or prevention of future or prospective employment in the motion picture industry. To state facts sufficient to constitute a cause of action for such loss or prevention of employment, it must be averred that at the time of the alleged tort there was a certain or definite prospect that plaintiffs would obtain it.

[fol. 259] The general rule is that before recovery can be had for interference with the loss of a future or prospective contract or business relationship, it must appear that such contract or relationship would otherwise have been entered into. (Cases collected 9 A.L.R. 2d 228, 256-7.) In *Campbell* v. *Rayburn*, 129 Cal. App. 2d 232, the complaint alleged: the plaintiff wrote a letter to the attorney general describing gambling activities in Riverside County; the attorney general advised the plaintiff that the letter had been forwarded to the defendant sheriff of Riverside County for attention and appropriate action; the defendant sheriff induced or otherwise caused two named gamblers who owned property in Palm Springs not to rent the plaintiff office space for the purpose of carrying on his business as a real estate broker; one of the named gamblers told the plaintiff he would not "give the plaintiff standing room"; and this same gambler had influenced his friends not to rent office space to the plaintiff, thus forcing him to conduct his business from his home. Demurrer was sustained without leave. Saying there was an attempt to state a cause of action for alleged wrongful interference with prospective contractual relations, the court on review held (p. 234):

> [fol. 260] "[N]o facts are alleged with respect to whether such accommodations would otherwise have been available on terms satisfactory to the plaintiff, the availability or lack of accommodations other than those referred to, or facts showing that the plaintiff

had any reasonable expectation of economic advantage which would otherwise have accrued to him, and no facts are alleged tending to show the nature or amount of any damage to the plaintiff.

"The general principles applicable here have been applied in decisions in other states."

The court then quoted with approval from *Goldman* v. *Feinberg*, 130 Conn. 671, 37 A. 2d 355, *Union Car Advertising Co.* v. *Collier*, 263 N.Y. 386, 189 N.E. 463, and *Debnam* v. *Simonson*, 124 Md. 354, 92 A. 782. The judgment was affirmed.

In *Goldman* v. *Feinberg*, 130 Conn. 671, 37 A. 2d 355, quoted from in the Campbell case, one of the defendants requested the plaintiff, a real estate broker, to show him some houses which were for sale. The plaintiff did so over a period of 7 months but to no avail. Among the [fol. 261] homes was one which the plaintiff saw on a public listing issued by a bank, the list price for which was stated to be the irreducible minimum. At the defendant's request the plaintiff inquired of the bank if the price could be lowered and was told it could not. He did not inform the bank he was negotiating with the defendant. Later the bank sold the house to the defendant and paid the latter's father (also a defendant) a commission. The father had been present when the plaintiff showed the house to the son. The plaintiff's theory was that the defendants had conspired fraudulently to represent to the bank that the father was the procuring broker, thus depriving the plaintiff of a commission he would otherwise have been able to earn. The question as stated by the court was "whether the plaintiff, in order to make out a cause of action, must prove that he would have made a profit except for the unlawful interference with business relations is recognized not only in respect to existing contracts but also as to one's right to pursue his lawful occupation or business and concluded (37 A. 2d 356):

"It does not follow from this, however, that a plaintiff [fol. 262] may recover for an interference with a mere possibility of his making a profit. On the Contrary,

wherever such a cause of action as this is recognized, it is held that the tort is not complete unless there has been actual damage suffered. Pollock, Torts, 14th Ed., p. 441; Winfield, Law of Tort-, 2d Ed., p. 643; Prosser, Torts, p. 1016 et seq. To put the same thing in another way, it is essential to a cause of action for unlawful interference with business that it appear that, except for the tortious interference of the defendant, there was a reasonable probability that the plaintiff would have entered into a contract or made a profit. [Citations.] In Lewis v. Bloede, supra, the Circuit Court of Appeals says (202 Fed. at p. 17): 'When the parties have entered into a contract, the terms of which are fixed, the plaintiff is only required to show the malicious interference and the damage proximately [fol. 263] resulting; whereas, if the ground of complaint is that he was about to make a contract, he is required to go further and show that he was not only "about to," but would, but for the malicious interference of the defendants, have entered into the contract.'"

In *Union Car Advertising Co.* v. *Collier,* 263 N.Y. 386, 189 N.E. 463, also quoted from in the Campbell case, the plaintiff was one of two bidders on a proposal to lease advertising space in the cars and platforms of an elevated railway. The plaintiff's bid offered the higher rental of the two. The negotiations with the lower bidder and proceeded to a point which made it likely, if not certain, that the plaintiff would get the contract on which it was bidding. The railway company awarded the contract to the defendants after changes in terms, on which the plaintiff had not been given an opportunity to make a proposal. The plaintiff's contention was that the result came about from the defendants' wrongful interference. The interference consisted of misrepresentations as to the plaintiff's business ability and financial integrity; the bringing of political and economic pressure on the railway's trustees; and the de-[fol. 264] fendants' indemnification of the railway from loss resulting from lawsuits arising out of rejection of the plaintiff's bid. The jury was instructed that the plaintiff could recover if the defendants' acts had prevented the

railway company "from entering with him into a contract which it is reasonably certain would have been made but for such interference." The judgment was for the plaintiff. Reversing, the Court of Appeals said (189 N.E. 469):

> "[Referring to the quoted instruction] If these words mean anything less than 'would have received,' we think they go too far. A cause of action exists where an executed contract is broken by a third person's unlawful interference. [Citation.] A cause of action has also been recognized where a party *would* have received a contract but for the malicious, fraudulent, and deceitful acts of a third party, such, for instance, as materially lying about him. [Citations.] There must be some certainty that the plaintiff would have gotten the contract but for the fraud. This cannot [fol. 265] be left to surmise or speculation. The courts rightfully extended the arm of the law to reach one who deliberately interfered with an executed contract [citation], since which time they have gone a step further and mulcted in damages him who does the same thing to one who *would* have received such a contract but for the illegal interference. [Citations.] The courts will be a little slow in permitting juries to speculate upon what a competitor had reason to expect or might reasonably suppose would happen. The expressions 'reasonable expectation' or 'reasonably certain' may not be as precise as '*would* have received,' and we think the latter words are preferable."

In *Debnam* v. *Simonson*, 124 Md. 354, 92 A. 782, also quoted from in the Campbell case and cited with approval in *Imperial Ice Co.* v. *Rossier*, 18 Cal. 2d 33, 36, the plaintiff devised a plan to buy certain land and build an apartment building thereon. He disclosed his project in confidence to one of the defendants who was an architect and [fol. 266] entered into a contract with the latter to prepare the plans and specifications. He also entered into contracts for labor, materials, and financing, and was about to enter into a contract for the land. At that time the defendants, conspiring together, acquired the land for themselves, thus

preventing the plaintiff from consum-ating his proposed purchase and also preventing his performance of the other contracts into which he had entered. A demurrer to the complaint was sustained. The Maryland Court of Appeals held (92 A. 783):

> "The mere fact that the plaintiff has suffered damage or has lost an opportunity to profit financially because of his failure to consummate his plans owing to the purchase of said lot of land by the defendants does not in itself give him the right of recovery from the defendants for the damage *sus*-sustained by him. The act must be of such a character as to create an actionable wrong before the right of recovery against the defendants exists, and, to create an actionable wrong, the legal rights of the plaintiff must in some way be [fol. 267] invaded. There must be a violation of a legal right committed knowingly to create a cause of action. . . .
>
> "[92 A. 784.] [T]his declaration is also defective because it does not allege with sufficient clearness, if at all, that, but for the alleged interference of the defendants, the plaintiff would have become the purchaser of the property, and would have succeeded in consummating his alleged contemplated plans or project. Such an allegation is necessary. Before he can recover it must be shown that, but for that interference, the purchase would have been made and his plans consummated."[7]

The complaint in the case at bar is devoid of any allegation of fact that any contract or relationship would have [fol. 268] been entered into between any one of plaintiffs and any one of defendant motion picture producers and distributors or with anyone in the motion picture industry but for the alleged agreement. There is no factual showing

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[7] And see *Hundley* v. *Louisville & N.R. Co.*, 105 Ky. 162, 48 S.W. 429, 431, 63 L.R.A. 289, 88 A.S.R. 298; *Bailey* v. *Hans Watts Realty Co.*, 113 W. Va. 739, 169 S.E. 404; *Celli & Del Papa* v. *Galveston Brewing Co.*, (Tex.) 227 S.W. 941, 943; *Payne* v. *Gebhard*, (Tex. Civ. App.) 136 S.W. 1118, 1120; *Harnick* v. *Avrum Realty Corp.*, 248 App. Div. 385, 288 N.Y.S. 256.

of denial of employment. There is no allegation that at the time the agreement was made, or at any time thereafter, any one of plaintiffs was an employee of any one of the defendants or had any reasonable prospect of becoming such; or that any one of them was, or is, or had any prospect of being a producer of motion pictures. There is not even an allegation that there were any negotiations pending or in progress between any one of plaintiffs and any one of defendants or with anyone in the industry, or that any plaintiff was seeking employment in the industry at the time of the alleged tortious interference. There is no allegation that at any time after the making of the agreement any one of plaintiffs requested employment from any one of defendants or from anyone in the motion picture industry. It is not alleged that but for defendants' alleged interference any one of plaintiffs would, or even probably or possibly would, have been employed in the industry. At the oral argument counsel for plaintiffs conceded it was not alleged [fol. 269] "that individual plaintiffs did apply for work and were denied the right to work."

So far as appears, the last efforts of plaintiffs to obtain employment may have occurred years before the agreement. All that is alleged is that at some unspecified time prior to the agreement, they had been so employed. When and why that employment was terminated is not alleged. Since the employment terminated some time before the agreement, in the absence of contrary allegation the inference necessarily is that the termination was the result of facts wholly disconnected from the agreement and that those facts, whatever they may have been, still are effective. It cannot be inferred from the alleged fact that at some unspecified time prior to the agreement plaintiffs were employed in the motion picture industry, they have not obtained employment since they invoked their constitutional privilege solely because of that fact.

There is an entire absence of factual allegation showing that any legally protected interest of plaintiffs has been interfered with. Neither an existing nor a prospective contract or business relationship is alleged. And there is nothing in the pleading from which it may be inferred that

any prospective contract or business relationship has been [fol. 270] interfered with by any wrongful act of defendants. The most that is alleged is a hope or expectation of employment. The complaint does not state facts sufficient to constitute a cause of action.

Bigelow v. *RKO Radio Pictures,* 327 U.S. 251, 90 L.Ed. 652, 66 S.Ct. 574, and *Speegle* v. *Board of Fire Underwriters,* 29 Cal. 2d 34, cited by plaintiffs, are not apposite. In Bigelow, a suit for an injunction and damages for violation of the Sherman and Clayton Acts, the sole question was, as stated by the court, "whether the evidence of damage [was] sufficient to support the verdict" for plaintiff. In Speegle the complaint alleged interference with existing contracts.

Plaintiffs argue they should have been permitted to amend. One of the grounds of defendants' demurrer to the original complaint was that no cause of action was stated because of the absence of any allegation to the effect that an existing or prospective contract or business relationship had been interfered with.[8] The demurrer was sus- [fol. 271] tained with leave. Plaintiffs then filed the complaint now before us. Plaintiffs amended only perfunctorily. For all practical purposes the original and the amended complaint are identical. No curative effort at all was exerted though opportunity was given. We must assume that plaintiffs have stated their cases as strongly as it was possible for them to do. (*Faulkner* v. *Cal. Toll Bridge Au-*

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[8] In points and authorities filed in support of their demurrer to the original complaint, defendants said: "The complaint does not state facts sufficient to constitute a cause of action for interference with business relations. No existing contract between plaintiffs and any of the defendants is alleged. Consequently, there must be shown a reasonable probability that, but for the alleged interference, business relations between the parties would have been entered into. It is not enough that plaintiffs hoped or even expected that such relations might eventuate, the fact that they would have eventuated must appear.

"Before recovery can be had for interference with and loss of a prospective business relationship or contract, it is held that it must appear that such relationship or contract would otherwise have been entered into.'

"*Annotation,* 9 A.L.R. 2d 256-257, and cases there cited."

thority, 40 Cal. 2d 317, 328.) Having declined to avail themselves of leave to amend in the particular which defendants specifically pointed out to them, plaintiffs must "stand upon their pleading as against all grounds and if the complaint is objectionable upon any ground the judgment of dismissal must be affirmed. [Citations.] Upon appeal from a judgment rendered after refusal to amend a complaint to which a demurrer has been sustained, it must be presumed that the pleader has stated his case as strongly as it can be stated in his favor and all ambiguities and un- [fol. 272] certainties must be resolved against him." (*Metzenbaum* v. *Metzenbaum,* 86 Cal. App. 2d 750, 752.) Plaintiffs evidenced their satisfaction with the pleading and their willingness to stand or fall on it in its present form. The court did not err in sustaining the demurrer of the motion picture producers and distributors without leave to amend.

In view of our conclusion, we do not reach other points argued by counsel.

THE CASE AGAINST THE MEMBERS OF THE COMMITTEE AND THE INVESTIGATOR

The demurrers of these defendants were sustained with leave to amend. Plaintiffs declined to amend. As the complaint stands, it alleges these defendants entered into the agreement. For the reasons stated in considering the complaint as against the other defendants, it does not state facts sufficient to constitute a cause of action against the members of the Committee or the investigator. The complaint avers that with respect to all matters alleged these defendants "acted both in their official capacity with relation to said House Committee on Un-American Activities and individually in non-official capacities." These defendants argue they cannot be sued for the same acts both in their official capacities and in their personal capacities. [fol. 273] In view of what we have said it is unnecessary to decide the point.[*]

[*] See *Laughlin* v. *Rosenman,* App. D.C., 163 F. 2d 838, 843; *Cooper* v. *O'Connor,* App. D.C., 107 F. 2d 207, 210; *Reed* v. *Molony,* 38 Cal. App. 2d 405, 411; 67 CJS 417, Sec. 125.

The judgments are affirmed.

Vallée, J.

We concur.

Shinn, P.J., Wood, J.

[fol. 274] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

ORDER DENYING PETITION FOR REHEARING—
July 11, 1956

Civil Nos.
20769 WILSON v. LOEW'S INC.
21100 WILSON v. LOEW'S INC.

The Court: Petition for rehearing denied.

[fol. 275] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

WILSON, *et al.*, Appellants,

v.

LOEW'S INCORPORATED, *et al.*, Defendants;
ASSOCIATION OF MOTION PICTURE PRODUCERS, INC., *et al.*,
Respondents.

WILSON, *et al.*, Appellants,

v.

LOEW'S INCORPORATED, *et al.*, Defendants;
DOYLE, *et al.*, Respondents.

ORDER DENYING HEARING

After Judgment by District Court of Appeal
2nd District, Division 3, Civ. Nos. 20769, 21100

Appellants' petition for hearing Denied.

Carter, J. is of the opinion that the petition should be granted.

Gibson, Chief Justice.

Filed, Aug. 8, 1956, William I. Sullivan, Clerk, By S. F. Deputy.

William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 12th day of September A. D. 1956.

William I. Sullivan
By Crabtree, Deputy Clerk.

[Seal]

[fol. 276] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed January 21, 1957

The petition herein for a writ of certiorari to the District Court of Appeal of the State of California, Second Appellate District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.